FIFTH EDITION.

THE

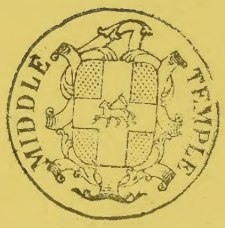
BILLS OF SALE ACTS, 1878 & 1882.

BY

HERBERT REED.

LONDON:

WATERLOW BROS. & LAYTON.



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THE

BILLS OF SALE ACTS,

1878 & 1882;

WITH

RULES OF COURT, FORMS, AND PRECEDENTS:

AND

AN EPITOME OF THE LAW,

AS AFFECTED BY THE ACTS:

TOGETHER WITH THE

STATUTES, RULES, AND FORMS

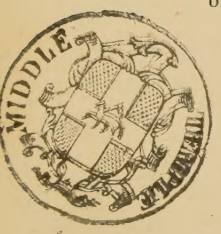
RELATING TO

INTERPLEADER.

BY

HERBERT REED,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.



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PREFACE TO THE FIFTH EDITION.

It is the object of the following pages to present a short statement of the law of bills of sale, as affected by the Bills of Sale Acts, 1878 and 1882. The Acts will be found printed together, as they are to be so construed.

Since the previous Editions, the changes in the law effected by the Bills of Sale Act (1878) Amendment Act, 1882, have necessitated considerable alterations in the text, which has been in a great measure re-written. Some light also has been thrown on the construction of the statute by cases lately decided, which are incorporated in the present Edition. The provisions of the Bankruptcy Act, 1883, have also been noticed where affecting bills of sale.

Under each section are collected such cases as involve points of practical importance, and in the interest of those at a distance from reports, a full extract of material facts has been given in dealing with recent decisions. A reference to contemporaneous reports will be found in the first citation of each case.

As mortgagees of chattels are frequently called upon to support their rights against adverse claimants, it is believed that some consideration of proceedings by interpleader, in which their title is usually contested, may add to the practical utility of a work on bills of sale.

In the Appendix will be found the Statutes, Orders, Rules and Forms relating to bills of sale and interpleader, together with precedents of bills of sale, which have been revised and settled expressly with reference to the Bills of Sale Act (1878) Amendment Act, 1882, and comprise such modifications of the statutory forms as will be most frequently required in practice.

The decisions throughout the work will be found noted to the end of Trinity Sittings, 1883.

H. R.

8, *King's Bench Walk, Temple,*
November, 1883.

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INTRODUCTION.

PROPERTY, as the subject of English law, is divided into things real and personal. Things real are such as are permanent, fixed, and immoveable. Things personal are goods, money, and all moveables.[a] It is to the latter division, or things personal, alone, that the Bills of Sale Acts apply.

Personal chattels have always been transferable without the formalities essential to the conveyance of real property, for the feudal principles of tenure, which in ancient times opposed the alienation of landed estates, could have no application to the then insignificant subjects of personal property, which passed freely from hand to hand.[b]

To confer a valid title to chattels personal, they must be transferred by some person who has a right to transfer them and capacity to contract. It is a general rule of law that a transferee, not in market overt, takes only his transferor's title, for a person cannot convey to another a right which he does not himself possess; thus, if a servant takes his master's chattels and pledges them, the pledge cannot alter or affect the ownership or give the pledgee any right to detain them as against the owner; but if a person has obtained goods by fraud, under colour of a contract, intended to transfer to him the property in them, though he himself could not detain the goods against the real owner, yet a *bonâ fide* purchaser or mortgagee who has obtained possession of them without notice of the fraud, and before the vendor interferes to recover them, will have a good title to the extent of his advances;[c] and a person having a qualified interest in goods can charge them to the extent of that interest. If the true owner stands by and allows another to deal with goods as if he were the owner, and thereby induces a third party to purchase or make advances upon them, he cannot after-

[a] Bl. Comm. II. 16. [b] Williams on Personal Property, 35.

[c] Cundy *v.* Lindsay, 3 App. Cases, 459; 47 L. J. Q B. 481; 38 L. T. 573; 26 W. R. 406.

wards, though he acted under a mistake, claim them from such third party,[a] although this estoppel would not bind his creditors.[b]

The capacity to contract may be affected by the social or political status of the parties, as in the case of alien enemies and the like, which it is unnecessary here to consider; or there may be a disability to contract, arising from infancy, coverture, or unsoundness of mind.

Infants under the age of twenty-one years are clothed only with a qualified power of contracting, and are bound only by contracts which are necessary, and for their benefit and advantage, and in general an infant's contracts are voidable, at his option, on attaining majority, or within a reasonable time afterwards.

By ss. 1 and 2 of the Infants' Relief Act, 1874,[c] contracts by infants to secure the repayment of money lent or to be lent, or goods supplied or to be supplied (other than contracts for necessaries), are absolutely void, nor is a ratification after full age, whether made for the same or a fresh consideration, sufficient; but it should be observed that the Act does not appear to alter the rule of law that the other contracting party, if of full age, will remain bound.

Deeds executed by an infant are voidable at his election, nor can he be sued on any covenant therein contained; nor will a mortgage deed be binding on an infant, unless executed in pursuance of a legal obligation, or accessory to some other act that the infant was bound to do; thus, a deed executed by an infant to secure advances made to him for expenditure for necessaries, whereby he covenanted to repay the same with interest at the rate of ten per cent. per annum, and granted and assigned his reversionary interest in certain chattels to the plaintiff, subject to the usual proviso for redemption on payment of the principal-money and interest, was held voidable by him on attaining full age.[d] However, in equity, an infant who has,

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[a] Waller *v.* Drakeford, 22 L. J. Q. B. 274; 1 E. & B. 749; 17 Jur. 853; Gregg *v.* Wells, 10 A. & E. 90; National Mercantile Bank *v.* Hampson, 5 Q. B. D. 177; 49 L. J. Q. B. 480; 28 W. R. 424.

[b] Richards *v.* Johnston, 4 H. & N. 660; 28 L. J. Ex. 322; 5 Jur. N. S. 520; but see Low *v.* McGill, 12 W. R. 826; 10 L. T. N. S. 495.

[c] 37 & 38 Vic. c. 62.

[d] Martin *v.* Gale, 46 L. J. Ch. 84; 4 Ch. D. 428; 25 W. R. 406; 36 L. T. 357.

by fraudulently misrepresenting his estate or age, obtained a loan upon mortgage, is estopped from disputing the mortgage;[a] and as a general rule, if an infant be old enough to commit a fraud by inducing others to think that he is of full age, if the Court cannot restore the parties to their original position, the infant will be bound as if he were an adult.[b]

A married woman was incapable of binding herself by a contract, unless made with reference to and on the faith of her separate estate, as to which she might contract as freely as a *feme sole*;[c] thus, she might pledge her separate property and make it answerable for her engagements;[d] but she could not give a bill of sale over property in which she had merely an equitable interest, without the concurrence of the person having the legal estate.[e] Now, however, by the Married Women's Property Act, 1882,[f] any woman married after the 1st of January, 1883, the date of the commencement of the Act, may dispose of her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee, or if married before the commencement of the Act, may so dispose of property her title to which accrues after that date.

The contract of a lunatic or drunken person, made when incapable of understanding its effect, is voidable at his option; unless the other contracting party did not believe, and had not reasonable cause to believe, that he was drunk or of insane mind; but every person is presumed to be of sound mind and capable of making an agreement until the contrary appears.[g]

An executor or administrator can confer a valid title to the personalty of his testator by sale, mortgage or pledge, although the property may have been specifically bequeathed;[h] nor is it incumbent on the purchaser or mortgagee to see the money properly applied, although he knew that he was dealing with a

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(a) Watts *v.* Cresswell, 9 Vin. Ab. 415; Teynham *v.* Webb, 2 Ves. Sr. 212.

(b) Nelson *v.* Stocker, 4 De G. & J. 458; 5 Jur. N. S. 751.

(c) See Hulme *v.* Tennant, 1 Bro. C. C. 16; 1 W. & T. Leading Cases, 435.

(d) Aylett *v.* Ashton, 1 M. & Cr. 105.

(e) Chapman *v.* Knight, 5 C. P. D. 308; 49 L. J. C. P. 425; 42 L. T. 538; 28 W. R. 907.

(f) 45 & 46 Vic. cap. 75.

(g) Pollock on Contracts, 80; Leake on Contracts, 577.

(h) Mead *v.* Orrery, 3 Atk. 239; Scott *v.* Tyler, 2 Dick. 725.

person acting in a representative capacity;[a] unless the transaction affords intrinsic evidence that the person selling or dealing with the property is not acting fairly in the execution of his duty, or unless collusion exists between him and the purchaser or mortgagee:[b] but it would seem that an executor or administrator cannot make a valid sale or pledge of the property of the testator in satisfaction of his own debt.[c] An executor may, even before probate, take or give securities for debts due to or from the deceased, and acts so done will be good though he should die before the will has been proved.

An execution against the goods of a debtor will not prejudice the title to such goods acquired by any person in good faith and for valuable consideration before the actual seizure or attachment thereof by virtue of the writ; provided that such person had not, when he acquired his title, notice that such writ, or any other writ by virtue of which such goods might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff or coroner.[d]

The sheriff may sell the goods of the defendant in execution under a writ of *fi. fa.*, and confer a valid title on the purchaser, which title will not be affected, although the writ of execution be afterwards set aside;[e] unless, it seems, the warrant is illegal on the face of it;[f] but it is otherwise on a sale under an elegit, where if the judgment be reversed restitution will be ordered,[g] nor can a sheriff make a valid contract for sale of the goods of a judgment debtor against whom he holds a writ of *fi. fa.* until he has actually seized the goods.[h]

It may here be observed, that as by law property acquired by an undischarged bankrupt vests in his trustee,[i] a bankrupt or liquidating debtor, before discharge, has not, as a rule, a title to

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[a] M'Leod *v.* Drummond, 17 Ves. 154.

[b] Rice *v.* Gordon, 11 Beav. 265.

[c] M'Leod *v.* Drummond, 17 Ves. 154.

[d] Mercantile Law Amendment Act, 1856 (19 & 20 Vic. c. 97), sec. 1; as to what amounts to seizure within the section, *see* Gladstone *v.* Padwick, L. R. 6 Ex. 203; 40 L. J. Ex. 154; 19 W. R. 1064; 25 L. T. 96.

[e] Manning's Case 8 Co., 94[b]; Doe *v.* Thorn, 1 M. & S. 425.

[f] Lock *v.* Sellwood, 1 Q. B. 736.

[g] Goodyere *v.* Ince, Cro. Jac., 246.

[h] *Exp.* Hall, *re* Townsend, 14 Ch. D. 132; 28 W. R. 556; 42 L. T. 162.

[i] Bankruptcy Act, 1869, sec. 15, sub.-sec. 3; Bankruptcy Act, 1883, sec. 44 (i.)

convey; but if he is permitted to trade and deal with assets belonging to the estate, or to hold himself out as the owner of property and raise money upon it, a purchaser or transferee for value, without notice of the bankruptcy, will be protected; but a trustee who leaves the bankrupt in possession of property is not by the mere fact of so doing estopped from setting up his own title, unless the property is such as is usually held for the purposes of sale.[a] An undischarged bankrupt to whom furniture has been given by a resolution of creditors, can make a valid assignment of it by bill of sale.[b]

After a scheme of arrangement has been come to by which an undischarged bankrupt is permitted to carry on his trade, he may deal with or dispose of his property in the ordinary course of business, and a bill of sale given to secure advances made to assist his carrying out the arrangement will be protected, even in cases where the mortgagee has notice of the bankruptcy, and of the trustee's power to seize on default;[c] and after a composition resolution has been and remains duly registered, a compounding debtor may give a bill of sale over his property, which will not be affected by fraud in obtaining the resolution.[d]

A joint-stock company may give or take a bill of sale in its incorporated name;[e] and where chattels were assigned to a company, which it appeared consisted of two persons only, it was held that the assignment enured for their benefit.[f]

Where the parties are of full capacity, personal chattels may be transferred by assignment or sale, by gift coupled with delivery of possession, or by deed without delivery.

The property in chattels may also be transferred conditionally

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[a] Meggy *v.* Imperial Discount Co., 3 Q. B. D. 711; 47 L. J. Q. B. 119; 38 L. T. 309; 26 W. R. 342; *Exp.* Ford, *re* Caughey, 1 Ch. D. 521; 45 L. J. Bank. 96; 34 L. T. 634; 24 W. R. 590.

[b] Brown *v.* Hickinbotham, 50 L. J. Q. B. 426.

[c] *Exp.* Allard, *re* Simons, 16 Ch. D. 505; 44 L. T. 35; 29 W. R. 406.

[d] Seymour *v.* Coulson, 5 Q. B. D. 359; 49 L. J. Q. B. 604; 28 W. R. 664; *Exp.* Burrell, *re* Robinson, 1 Ch. D. 537; 45 L. J. Bank. 68; 24 W. R. 353; 34 L. T. 198.

[e] Shears *v.* Jacob, L. R. 1 C. P. 513; 35 L. J. C P. 241; 14 W. R. 609; 14 L. T. 268.

[f] Maugham *v.* Sharpe, 17 C. B. N. S. 443; 34 L. J. C. P. 19; 12 W. R. 1057; 10 L. T. 870.

by way of mortgage, which may be by deed or parol,[a] subject to the mortgagor's right of redemption on payment of a sum of money at an appointed time, and this is usually effected by an assignment to become void on payment of the money secured, with liberty for the mortgagor to retain possession until default: or chattels may be pledged by transferring the possession to secure a debt, the property in them remaining in the pledgor.

A mortgagee of personal chattels is entitled to a decree for an account and foreclosure,[b] or to an order for sale and payment of the principal debt, interest and expenses,[c] after deducting which he becomes a trustee of the surplus for the mortgagor.

A sale of chattels may be either by deed or parol, nor is any written evidence necessary, unless the contract is within the provisions of the Statute of Frauds,[d] by the 4th section of which it is enacted, that no action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised; and by sec. 17, no contract for the sale of any goods, wares, or merchandises, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised.

Where the requisites of this statute are complied with, on the sale of a specific chattel, when nothing remains to be done by the vendor as between him and the buyer, the property in the thing sold passes by the contract of sale,[e] but on a sale of goods generally, or if any act remains to be done on behalf of

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[a] Flory *v.* Denny, 7 Exch. 581; 21 L. J. Exch. 223; Reeves *v.* Capper, 5 Bing. N. C. 136; 6 Scott, 877; 2 Jur. 1067.

[b] Wayne *v.* Hanham, 9 Hare 62.

[c] Carter *v.* Wake, 4 Ch. D. 605; 46 L. J. Ch. 841.

[d] 29 Car. II. cap. 3., s. 17.

[e] Martindale *v.* Smith, 1 Q. B. 389.

the seller, no property passes until the act has been done, or specific goods selected and appropriated to the purchaser.[a]

A gift, coupled with delivery of possession, is sufficient to pass the property to the donee without deed or writing; nor is it necessary that there should be any consideration for the gift. If, from the nature of the gift, a complete manual delivery is impossible, the best delivery that the circumstances permit will be sufficient; as for example, handing the key of a warehouse where goods are deposited, with the intention to transfer to the donee the dominion over them; but if the tranaction be not for valuable consideration, a transfer will be voidable unless coupled with delivery of possession or made by deed, for in order to transfer property by gift, there must either be a deed or instrument of gift, or an actual delivery of the thing to the donee;[b] unless something has been done to create the relation of trustee and *cestui que trust* between the donor and donee. If the donor die before possession is taken by the donee, an ineffectual gift cannot be supported as a *donatio mortis causâ*,[c] nor can it be sued for as a legacy.[d]

As we have seen, a sale or mortgage of personal property, with certain exceptions, may be effected by parol, but to avoid the inconvenience of proving complicated transactions by the uncertain and often defective evidence of witnesses, the terms of the contract are, in practice, generally reduced into writing under seal, by which the rights and liabilities of the parties are clearly defined. It has thus become usual on gifts, and assignments not gratuitous, where the subject of the assignment is left in the assignor's possession, to solemnly contract by deed; which, importing a consideration, leaves the transaction impeachable only for fraud or illegality. Such a deed is called a bill of sale, and passes the property in the thing sought to be conveyed by force of the grant.

It is obvious that this power of transferring the property in chattels, by a secret dealing without delivery or change of possession, would, if unrestricted, enable persons to gain a delusive credit, and would tend to serious frauds upon creditors

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(a) Tarling *v.* Baxter, 6 B. & C. 360.

(b) Irons *v.* Smallpiece, 2 B. & Ald. 551, per Abbott, C. J.; Shower *v.* Pilck, 4 Ex. 478; 19 L. J. Ex. 113.

(c) Edwards *v.* Jones, 1 M. & Cr. 226. (d) Tate *v.* Hibbert, 2 Ves. Jr. 121.

who have dealt on the faith of the presumption of ownership arising from the possession of goods; and from very early times statutes have been passed to control secret alienations of property.

A restrictive enactment was passed in the reign of Henry VII., and declared to be void all deeds of gift of goods made in trust to the use of the donor,[a] and this was followed by 13 Eliz. c. 5, sec. 2, by which every grant or gift of chattels made with intent to defeat or delay creditors or others is declared utterly void against the person so defeated or delayed; but by sec. 6, the Act shall not extend to any alienation made upon good, which here means valuable, consideration, and *bonâ fide* to any person without notice of the fraud.

In Twyne's Case,[b] which remains a leading authority at the present day, six resolutions were delivered by the Court, declaring, as signs and marks of fraud, the generality of a gift, the donor's continuance in possession, the secrecy of the transaction, that it was made pending writ, a trust between the parties, and that unusual clauses were contained in the deed; and Lord Coke, sagely advising those about to take a bill of sale, says: "Let it be made in a public manner, and before the neighbours, and not in private, for secrecy is a mark of fraud. Let the goods and chattels be appraised by good people to the very value, and take a gift in particular in satisfaction of your debt. Immediately after the gift take possession of them, for continuance of the possession in the donor is the sign of trust."

A deed, though not fraudulent within the statute of Elizabeth, may yet be invalid under the bankruptcy laws, and an assignment by a person of all his property for a past debt, or of part if made with a view to prefer, and when unable to pay his debts, will, in the event of his bankruptcy within a certain time, be void against his trustee.

The ingenuity of conveyancers, however, devised means to effect a transfer without any apparent change of ownership, and secret assignments, when the grantor's possession was consistent with the deed, were found to be untouched by the

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[a] 3 H. VII. cap 4. See also 50 Ed. III. cap. 6.

[b] 3 Rep. 80; 1 Sm. L. Cases, 8th ed. 1.

statute of Elizabeth or the bankruptcy laws.[a] To protect creditors from frauds of this nature, was passed the Bills of Sale Act, 1854, followed by the Bills of Sale Act, 1866.

These statutes worked a salutary reform, but means to evade their operation were afforded by several decisions, and it became apparent that the existing law pressed with undue severity on genuine transfers of property, and was inadequate to deal with the mischief it sought to suppress.

In 1875, a measure was introduced into Parliament to amend the Bills of Sale Act, 1854, and after the legislative vicissitudes of three Sessions, became law on July 22nd, 1878.

This Act, which consolidates and amends the law relating to bills of sale, repeals the Bills of Sale Acts, 1854 and 1866,[b] and applies to every bill of sale executed after January 1st, 1879, the date of the commencement of the Act, and to renewals of the registration of bills of sale, whether executed before or after that time.

Shortly after the statute became law, measures were taken for its amendment, and a circular was addressed to the judges and registrars of County Courts of England and Wales, requesting a statement of their experience of the operation of the Bills of Sale Acts, the result being embodied in a blue book.[c] Thereupon, one of the various bills to amend the law of bills of sale brought in during the session 1880 -1 was referred to a select committee, who examined witnesses and presented a report.[d] As a result of these inquiries was framed the present amendment Act, which, after passing through committee, was referred to a committee in the Lords, from which it issued in substantially its present form.

The Act, which applies to all bills of sale given by way of security for the payment of money, registered on or after the 1st of November, 1882, the date of its commencement, must be regarded as an experiment, and for the first time extends protection to the grantor.

The amendment Act is to be construed together with the Act of 1878, now called the principal Act, and it may be con-

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(a) *Exp.* Sparrow, 2 De G. M. & G. 907.
(b) Sec. 23 (1878).
(c) Parliamentary Papers, 1881, c. 2,859.
(d) 1881, 341.

venient here to consider the changes effected in the law. The operation of the amendment Act is confined exclusively to documents given by way of security for the payment of money.[a] Absolute sales in good faith, although unaccompanied by change of possession, will, therefore, not be within the amendment Act, but absolute bills of sale cannot now be given by way of security. Apparently, bills of sale registered after the commencement of the amendment Act, given otherwise than by way of security for the payment of money, will still be within the principal Act. Two classes of bills of sale seem thus to be contemplated, governed by different statutes, and to be attested and registered with different formalities.

It would seem, also, that inventories of goods, with receipt thereto attached, or receipts for purchase-moneys of goods, when not transferred in the ordinary course of any trade or calling, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right shall be conferred in equity to any personal chattels, or to any charge or security thereon, which, by sec. 4, clause 1, of the principal Act, are declared bills of sale, will no longer be available as securities; for every bill of sale, within the amendment Act, is declared void, unless made in accordance with the form in the schedule.[b] Further, every such bill of sale given in consideration for less than £30 will be void,[c] a provision recommended by the Committee in consequence of the frequency of bills of sale for small amounts.

Every bill of sale within the amendment Act must now be duly attested, and registered under the principal Act, and shall truly set forth the consideration for which it was given, otherwise it will be void in respect of the personal chattels comprised therein.[d] This dispenses, as to this class of bill of sale, with the whole doctrine of apparent possession, registration being now compulsory, even as between the grantor and grantee, and an unregistered bill of sale will now be worthless as a security. It would, however, still be valid as a covenant for the payment of money.

The principal Act required that a bill of sale should be attested by a solicitor, who was to state in the attestation clause

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[a] Sec. 3, cl. 2 (1882).
[b] Sec. 9 (1882).
[c] Sec. 12 (1882).
[d] Sec. 8 (1882).

that he had explained it to the grantor; but explanation became a mere formality, the Act not avoiding a bill of sale where no explanation had been given. The presence of a solicitor was, however, some guarantee to the good faith of the transaction, and the substitution by sec. 10 of the amendment Act, of attestation by one or more credible witnesses, is a questionable improvement. Bills of sale given otherwise than as security appear still to require attestation by a solicitor, under the principal Act; but remain valid as between the grantor and grantee, although not attested or registered.

A striking defect in the former law was the sanction it gave to assignments of after-acquired property, so that persons who supplied goods upon credit frequently found them covered by a bill of sale as soon as delivered, and were unable to obtain payment. The amendment Act curtails such assignments, providing, by secs. 4 and 5, that every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the chattels it comprises, and shall have effect only in respect of chattels specifically described in such schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described, and also of chattels so described of which the grantor was not the true owner at the time of the execution of the bill of sale. A bill of sale will not be void in the absence of a schedule, or as to chattels not the property of the grantor at the time of its execution, in respect of any of the things excepted by sec. 6 of the amendment Act.

Before the passing of the principal Act, it had become the practice, on giving a bill of sale, to enter into a contemporaneous agreement, which did not require registration, to grant and accept within twenty-one days successive bills of sale, the last only to be registered; and such an arrangement was held valid against execution creditors, [a] though void in the event of bankruptcy.[b] This practice is met by sec. 9 of the principal Act declaring, that a subsequent bill of sale executed within or on the expiration of seven days after the execution of a prior unregistered

[a] Ramsden *v.* Lupton, L. R. 9 Q. B. 17; 43 L. J. Q. B. 17; 22 W. R. 129; 29 L. T. 510.

[b] *Exp.* Cohen, *re* Sparke, L. R. 7 Ch. 20; 41 L. J. Bank. 17; 25 L. T. 473; 20 W. R. 69.

instrument, comprising all or any part of the personal chattels comprised in such prior bill of sale, shall, if given as a security for the same or any part of the debt secured by such prior bill of sale, be void to the extent to which it is a security for such debt, unless given in good faith, for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading the Act. The section does not, however, prohibit successive bills of sale over newly-acquired chattels, and it will probably be by some such means, if at all, that after-acquired property will be now made available as a security.

Registration will still be made in the manner prescribed by sec. 10, sub-sec. 2, of the principal Act, within seven clear days after the execution of the bill of sale; or, if it is executed out of England, then within seven days after the time at which it would, in the ordinary course of post, arrive in England if posted immediately after its execution.[a] This amendment removes a difficulty which formerly affected bills of sale executed abroad.

A power of relief is reserved in cases of accident, for by sec. 14 of the principal Act, any judge of the High Court, on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the prescribed time, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may, on such terms as he thinks fit, order the register to be rectified, and the true name, residence, or occupation to be inserted, or may, in his discretion, extend the time for registration.

Every registration of a bill of sale, whether executed before or after the commencement of the Acts, unless renewed once at least every five years, will become void.[b]

Provisions are also contained for a list to be kept by the registrar of the names of grantors of registered bills of sale;[c] and for entering satisfaction.[d]

Formerly, registration conferred no priority of title against claimants other than execution creditors or a trustee under the grantor's bankruptcy or liquidation, but it is now enacted by the principal Act, that in case two or more bills of sale are given, comprising wholly or in part any of the same chattels, they shall have priority in the order of their date of registra-

[a] Sec. 8 (1882).
[b] Sec. 11 (1878).
[c] Sec. 12 (1878).
[d] Sec. 15 (1878).

tion.[a] Further bills of sale within the amendment Act are void unless registered.

Publicity being thus ensured, the amendment Act, to facilitate inquiry, creates a system of local registration, enacting by sec. 11, that where the residence of the grantor, or the place wherein are the chattels assigned, is outside the London Bankruptcy District, the registrar shall forthwith, within three clear days after registration, transmit an abstract of the bill of sale to the County Court registrar in whose district such places are situate, which abstract is to be filed and indexed, and may be inspected as in the case of bills of sale registered by the registrar under the principal Act.

The declaration contained in sec. 20 of the principal Act, that chattels comprised in a duly registered bill of sale should be excluded from the operation of sec. 15, sub-sec. 5, of the Bankruptcy Act, 1869, averted a danger to which bills of sale had always been subject, and increased their value as securities. The effect of the section was to multiply the number of bills of sale, which rose from 19,513, in 1878, to 48,677 in 1879, when the Act commenced, and 56,828 in the following year. The policy of the section was considered doubtful, and met with strong opposition amongst the commercial classes. Accordingly, the amendment Act repeals sec. 20 of the principal Act[b] so far as regards bills of sale given by way of security for the payment of money, and restores the former law, under which chattels comprised in a registered bill of sale were within the doctrine of reputed ownership. To this repeal is principally due the decrease of bills of sale since the commencement of the amendment Act, the number registered to the present time being upwards of 20,000 less than during the corresponding period of last year.

A bill of sale will no longer be any protection in respect of the chattels it comprises, which would otherwise have been subject to distress under a warrant for the recovery of taxes, poor and other parochial rates,[c] and this provision, with the landlord's right of distress, will operate with additional force, for, as will be seen, chattels cannot now lawfully be seized and immediately removed.

[a] Sec. 10, sub-sec. 4 (1878). [b] Sec. 15 (1882). [c] Sec. 14 (1882).

After providing for the security of creditors, the Act interferes to protect the grantor against oppression by a section which applies to all bills of sale in force on the 1st of November, 1882, whether registered under the principal or amendment Acts, directing that all personal chattels seized under any bill of sale after that date shall remain on the premises where they are so seized, and shall not be removed or sold until after the expiration of five clear days from the day of seizure.[a]

The amendment Act also limits the power of seizure to certain events specified in sec. 7, and provides that the grantor may within five days from the seizure apply to a Court or judge, who, if satisfied that the cause of seizure no longer exists, may restrain the mortgagee from removing or selling the chattels, or may make such order as may seem just. This power will be useful in the cases of hardship or extortion which, under the former law, were of frequent occurrence.

Other features of the Act will be found in the notes to each section, illustrated by the cases decided under the Bills of Sale Acts, 1854 and 1866, and the principal Act; and also since the commencement of the amendment Act.

The scheme of the amendment Act thus appears to be to require publicity on the transfer of chattels by way of security, and stringently to limit the remedies of bills of sale holders.

The Act was the product of much inquiry, experience, and wisdom, and might well have been expected to defy criticism. It has not, however, met with general approval, and presents difficulties of construction which have already been a source of considerable litigation. It is improbable that so loose a piece of drafting would have remained a single session without some attempt at amendment, had it not been that those who fostered legislation on the subject were satisfied by minimising the security afforded by bills of sale. The Act is admirably adapted to effect this purpose, and to release borrowers from their contracts; while lenders of money are popularly supposed to be able to protect their own interests. It has, however, been too often found that penal statutes are apt to defeat their object, and, where fraud escapes, honest transactions, tainted only with some technical defect, are avoided.

[a] Sec. 13 (1882).

THE

BILLS OF SALE ACTS, 1878 & 1882.

41 & 42 Vic. c. 31; 45 & 46 Vic. c. 43.

AN ACT

TO

CONSOLIDATE AND AMEND THE LAW FOR PREVENTING FRAUDS UPON CREDITORS BY SECRET BILLS OF SALE OF PERSONAL CHATTELS. [1878.]

[22*nd July*, 1878.

AND

AN ACT

TO

AMEND THE BILLS OF SALE ACT, 1878 [1882.]

[18*th August*, 1882.

Preamble. [1878.]

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the

Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preamble. [1882.]

WHEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble is said to be, as it were, a key to the understanding of a statute,(a) and the object of the Bills of Sale Acts has been to protect creditors, to give them a true idea of their debtor's position, and to prevent transactions by which a grantor is allowed to retain possession of property which the grantee may at any moment withdraw from the claims of creditors and dispose of as he thinks fit.(b) The amendment Act, while continuing this protection, is also designed to define the rights of bill of sale holders and borrowers of money, and to protect the latter against inequitable claims.

Short Title.

1. (1878.) This Act may be cited for all purposes as the Bills of Sale Act, 1878.

Short Title.

1. (1882.) This Act may be cited for all purposes as the Bills of Sale Act (1878) amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commencement.

2. (1878.) This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Commencement.

2. (1882.) This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

(a) Co. Litt. 79 a.

(b) Mather *v.* Fraser, 2 K. & J. 559; 25 L. J. Ch. 361; 4 W. R. 387; 2 Jur. N. S. 900; *Exp.* Sparrow, 2 De G. M. & G. 907.

Sec. 3. [1878.]

Sec. 3. [1882.]

3. (1878.) This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust), whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale. Application of Act.

By sec. 23 of the principal Act, any renewal, after the commencement of the Act, of the registration of a bill of sale, executed before its commencement, and registered under the Acts thereby repealed, shall be made under the Act in the same manner as the renewal of a registration made under the Act; and the rule of construction enacted by sec. 7 of the principal Act applies to all deeds or instruments, including fixtures or growing crops, executed before the commencement of the Act, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any Court, which shall take place or be issued after the commencement of the Act.

The principal Act will continue to apply to any bill of sale duly registered before the 1st of November, 1882, so long as its registration is not avoided by non-renewal or otherwise, and to bills of sale executed more than seven days before the commencement of the amendment Act, but unregistered.(a)

It would seem also that the principal Act still applies to bills of sale given otherwise than by way of security for the payment of money, although registered after the commencement of the amendment Act, for to this class of bills of sale that Act does not apply.(b)

All bills of sale given on or after the 1st of November, 1882, by way of security for the payment of money, will be governed by the amendment Act.

3. (1882.) The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not Construction of Act.

(a) Hickson *v.* Darlow, 31 W. R. 417; 48 L. T. 449; 23 Ch. D. 690.

(b) Sec. 3 [1882].

apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.[1]

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section 4 of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.[2]

Application of Act.

(1) The provisions of sec. 13 of the amendment Act apply to all bills of sale, whether registered before or after the commencement of the Act; as also does sec. 7, so far as it empowers the Court to restrain removal or sale.[a] It has been decided that the amendment Act is not retrospective so as to affect bills of sale executed more than seven days before its commencement;[b] nor does it avoid, as against the grantor, bills of sale duly registered under the Bills of Sale Act, 1854, of which no renewal of registration has been made.[c]

The words of the section providing that, unless the context otherwise requires, the Act shall not apply to any bill of sale duly registered before the commencement of the Act, so long as registration is not avoided by non-renewal or otherwise, are by no means easy of construction. If all bills of sale executed before the commencement of the Act are excluded, the words must be rejected as meaningless; while to hold that the stringent provisions of the amendment Act apply to bills of sale registered before its commencement, if registration turns out to be defective, and to put such bills of sale in a worse position than if they had not been registered at all, would work a very great hardship. It may be that the words of the section, being only negative, will be held not to apply to any bill of sale which has been registered before the commencement of the amendment Act, or which being executed more than seven days before that time, could not be so registered. It has not yet been decided which statute is to govern bills of sale executed within seven days before and registered after the commencement of the amendment Act.

(*a*) *Exp.* Cotton, 11 Q. B. D. 301; 49 L. T. 52.
(*b*) Hickson *v.* Darlow, 31 W. R. 417.
(*c*) Swire *v.* Cookson, 48 L. T. 877.

Application of Act.

It should be borne in mind that, as to bills of sale governed by the amendment Act, the security will not be protected, as formerly, by possession taken before the rights of third parties accrue.

(2) A definition of what is a bill of sale within the Acts will be found in sec. 4 of the principal Act, with which this section must be read.

The effect of the exception will be to exclude from the operation of the amendment Act absolute sales made in good faith, but without transfer of possession. Two classes of bills of sale would seem thus to be created, those given by way of security for the payment of money being within the scope of the amendment Act, while bills of sale given otherwise than by way of security will still be governed by the principal Act. This is the effect of a recent decision,(a) by which the section is held to qualify the whole Act. Absolute bills of sale therefore are subject to the provisions of the principal Act, and with regard to such transactions, the cases under the statute of Elizabeth should also be consulted,(b) for continued possession in the grantor may be evidence of fraud.

A deed absolute in form, but in fact given to secure the payment of money, will be within the amendment Act, and further would probably be void under sec. 9 of that Act. It has been said that the fair criterion to ascertain whether a transaction be a mortgage or not, is whether the remedies are mutual and reciprocal, but in every case the question is what, upon a fair construction, is the meaning of the instrument; and an absolute assignment will be turned into a mortgage if the real intention was that the property should be held as a security for the payment of money; (c) thus, if there be evidence of the non-execution or erasure, by mistake or fraud, of an intended defeasance, or proviso for redemption; or if there be a separate defeasance or agreement for a right of redemption, the transaction will be treated as a mortgage. There may also be taken into consideration recitals in other instruments, payment of interest, the inadequacy of the money paid to the value of the property, that the grantee has or has not taken immediate possession under the assignment, payment by him or by the grantor of the expenses, insurances, or other outgoings, and other circumstances tending to show that the assignment was intended to be redeemable.(d)

Another class of cases excepted from the scope of the section will be such as *exp.* Newitt, *re* Garrud,(e) where a landowner was

(a) Swift *v.* Pannell, 31 W. R. 543; 48 L. T. 351.
(b) Page 93.
(c) Coote on Mortgages, 4th ed. 22.
(d) Fisher on Mortgages, 3rd ed. 14.
(e) 16 Ch. D. 522; 29 W. R. 344; 44 L. T. 5; 51 L. J. Ch. 381.

Sec. 4. [1878.]

empowered to seize a builder's materials on his failure to perform the stipulations in a building agreement, for the licence to take possession of personal chattels is not given as security for a debt.

It would appear that by the section post-nuptial settlements will, in most cases, be excluded from the operation of the amendment Act. Post-nuptial settlements of chattels were bills of sale within the repealed Acts, and required registration; and now, when not given by way of security for the payment of money, would seem to be governed by the provisions of the principal Act. If given as security for the payment of money, they will be within the amendment Act, but having regard to sec. 9, great difficulty will be experienced to afford a satisfactory protection. They will also, as before, be impeachable at the instance of creditors under the statute of Elizabeth or the Bankruptcy Act.

Interpretation of terms.

4. (1878.) In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels,[1] and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt,[2] and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred,[3] but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same,[4] marriage settlements,[5] transfers or assignments of any ship or vessel or any share thereof,[6] transfers of goods in the ordinary

(2) Page 42.

(3) Page 44.

(4) Page 46.
(5) Page 47.

(6) Page 48.

course of business of any trade or calling,[a] bills of sale of goods in foreign parts or at sea,[b] bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.[a]

What is a bill of sale.

(1) The whole definition must be read subject to the qualification introduced by sec. 3, clause 2, of the amendment Act, by which bills of sale, or other documents given otherwise than by way of security for the payment of money, are excepted from the operation of that Act. Sec. 9 of the amendment Act must also be considered, requiring every bill of sale within that Act to be in the prescribed form, and it would seem that inventories, receipts and other documents mentioned in the section not fulfilling this condition, will no longer be valid securities for the payment of money. Bills of sale given by way of security for the payment of money are therefore subject to both Acts, must be in a particular form, and are in most cases absolutely void, unless complying with the provisions of the amendment Act; while bills of sale given for purposes other than as security may be in any form the parties devise, and are void only in the events and as against the persons named in sec. 8 of the principal Act, and to this class of bill of sale the amendment Act has no application.

A bill of sale is an instrument of transfer of chattels personal without delivery, and for the purposes of this section may be defined as a document transferring or intended to transfer, or to be a record or evidence of the transfer of chattels personal, unless given in the ordinary course of business, or in other cases excluded from the operation of the Acts.[c]

(*a*) *Exp.* North Western Bank, *re* Slee, L. R. 15 Eq. 69; 42 L. J. Bank 6; 21 W. R. 69; 27 L. T. 461; *Exp.* Watson, *re* Love, 5 Ch. D. 35; 46 L. J. Bank 97; 36 L. T. 75; 25 W. R. 489; Merchant Banking Co. *v.* Spotten, Ir. L. R. 11 Eq. 586. By sec. 17 of the amendment Act nothing in the Act shall apply to any debentures issued by any mortgage, loan or other incorporated Company, and secured upon the capital, stock or goods, chattels and effects of such Company.

(*b*) Scotland and Ireland are within the exception; Coote *v.* Jecks, L. R. 13 Eq. 597; 41 L. J. Ch. 599. A bill of sale, duly registered in England, over property, part of which was in Ireland, has been held to protect such property against an execution issued in Ireland by an English creditor on a judgment obtained in England (Brookes *v.* Harrison, 6 L. R. Ir. 332).

(*c*) Horsfall *v.* Key, 17 L. J. Ex. 266; 2 Ex. 778; Marsden *v.* Meadows, 7 Q. B. D. 80; 29 W. R. 816; 50 L. J. Ch. 536; 45 L. T. 301.

Absolute and conditional bills of sale.

A bill of sale may be absolute, the property in the articles assigned passing upon the execution of the deed, or conditional by way of mortgage to secure the payment of money at a future day; and in the latter case usually contained a proviso that the grantor shall remain in possession of the goods until default in payment. The property in the goods thereupon passes to the grantee, the right of possession remaining in the grantor, who alone can maintain trover until default, when the estate vests in the grantee freed from the condition.(a) But if the mortgagee have a right to immediate possession, though coupled with a trust to permit the mortgagor to hold until demand, it will be sufficient to enable him to support an action for a trespass to the goods.(b)

On an absolute sale, where the goods are delivered to the purchaser, a deed is seldom required, but it is generally advisable, for the sake of accuracy, to reduce the terms of the contract to writing. Further, by sec. 10, cl. 4 of the principal Act, in case two or more bills of sale are given, comprising the same chattels, they shall have priority in the order of date of their registration.

Declarations of trust.

Declarations of trust in chattels are not required to be in writing by sec. 7 of the Statute of Frauds;(c) but require registration under the section. Every defeasance, condition, or declaration of trust is to be deemed part of, and registered with, the bill of sale.(d)

Declarations of trust in chattels personal might, at common law be created by parol, upon the donor, by clear, unequivocal and irrevocable words, declaring himself or some other person a trustee.(e) If a person expressly or impliedly constitutes himself a trustee of personalty, that is a trust executed and capable of being enforced, although without consideration, but where the intention is to make an actual gift and not merely to declare a trust, the settlor must have done everything which according to the nature of the property is necessary to be done in order to transfer it, for there is no equity to perfect an imperfect gift.(f)

Under the repealed statutes, the term "bill of sale" was held to include any assignment of chattels personal by which the property was intended to pass to the assignee, and did not include a document by which no property was intended to pass. Thus it was formerly decided that a mere memorandum or receipt for purchase-money of goods, not intended to operate as a record of a

(a) Bradley *v.* Copley, 1 C. B. 685; 14 L. J. C. P. 222; 9 Jur. 599; Wheeler *v.* Montefiore, 2 Q. B. 133; 6 Jur. 299; 1 G. & D. 493.

(b) White *v.* Morris, 11 C. B. 1015; 16 Jur. 500; 21 L. J. C. P. 185.

(c) 29 Car. II. c. 3.

(d) Sec. 10, sub-sec. 3 [1878].

(e) Peckham *v.* Taylor, 31 Beav. 254.

(f) Milroyd *v.* Lord, 4 De G. F. & J. 264; 8 Jur. N. S. 806; Jones *v.* Lock, 35 L. J. Ch. 117; 14 W. R. 149; 11 Jur. N. S. 313; L. R. 1 Ch. 28.

sale,[a] a receipt with an inventory,[b] or memorandum[c] attached, did not require registration. In a recent case, however, the Lords Justices intimated that a receipt for goods might operate as an assurance of chattels; and shortly afterwards a receipt appended to an inventory of furniture and effects, "for the purchase-money in respect of the goods mentioned in the foregoing inventory," was held to require registration, as within sec. 7 of the Bills of Sale Act, 1854.[d] Such a receipt and inventory, upon an absolute sale by the sheriff, was held not to be a bill of sale within that Act.[e] Receipts.

The definition is, however, controlled by the words of sec. 3 of the principal Act, which apply the Act to instruments whereby the holder has power to seize or take possession of personal chattels, pointing to a bill of sale being a document on which the right of the claimant to some extent depends, either as an actual transfer or as an agreement to transfer the property, or as a muniment or document of title taken at the time as a record of the transaction. Therefore it would seem that where the purchase is completed before the receipt is given or asked for, and the sale is independent of the receipt, registration is unnecessary; thus the following transaction was held not within the principal Act. Goods in a defendant's possession were seized under a *fi. fa.*, and on the same day sold by the sheriff to the execution creditor, who paid a deposit at the time of sale, whereupon the sheriff gave possession of the goods, the balance being paid the following day. The next day the sheriff sent a receipt, affixed by a pin to an inventory, enclosed in a letter referring to both, and thenceforth the creditor paid the rent of the premises, but allowed the defendant to remain in occupation and to use the furniture; nevertheless it was decided that the inventory and receipt did not amount to a bill of sale, and that the purchaser was entitled to the goods as against a subsequent execution creditor.[f]

When a sale is followed by open delivery and taking of possession, the Acts do not apply;[g] but upon a mortgage, or if the goods are left in the possession of the seller, every document intended to be used as evidence of title to chattels personal should be treated as a bill of sale and registered, and care should be taken that such

(*a*) Byerley *v.* Prevost, L. R. 6 C. P. 144; Hale *v.* Met. Saloon Omnibus Company, 28 L. J. Ch. 777; 4 Drewry, 492; Thomson *v.* Barrett, 1 L. T. N. S. 268.

(*b*) Allsopp *v.* Day, 7 H. & N. 457; 31 L. J. Ex. 105; 5 L. T. 320; 10 W. R. 135; 8 Jur. N. S. 41.

(*c*) Graham *v.* Wilcockson, 46 L. J. Ex. 55; 35 L. T. 601.

(*d*) *Exp.* Cooper, *re* Baum, 10 Ch. D. 313; 39 L. T. 521; 27 W. R. 298; 48 L. J. Bank. 40; *Exp.* Odell, *re* Walden, 10 Ch. D. 76; 39 L. T. 333; 27 W. R. 274; 48 L. J. Bank. 1; and see *Exp.* Stooke, *re* Bampfield, 20 W. R. 925, *per* Bacon, C. J.

(*e*) Woodgate *v.* Godfrey, 28 W. R. 88; 5 Ex. D. 24; 49 L. J. Ex. 1; 42 L. T. 34.

(*f*) Marsden *v.* Meadows, 7 Q. B. D. 80.

(*g*) Marples *v.* Hartley, 1 B. & S. 1; 30 L. J. Q. B. 92; 7 Jur. N. S. 416; 9 W. R. 334; 3 L. T. 774.

documents are properly stamped, for being created bills of sale by the section, it would seem that the ordinary appraisement, receipt, or agreement stamp will not be sufficient. Where the transaction is by way of security, regard also should be had to sec. 9 of the amendment Act.

Assurances of personal chattels.

The words assignments, transfers, and other assurances of personal chattels, are to be found in the Bills of Sale Act, 1854, and were probably inserted in the present section to include documents or dealings of the same class, but not expressly within the words, of the first part of the definition.

Licences to seize.

(3) Having regard to the provisions of the amendment Act, licences to seize will seldom now be met with in practice, but until sec. 9 of that Act has been judicially discussed, some consideration of them is still necessary.

The common law does not recognise the doctrine of hypothecation so as to permit a debtor to create a general lien upon all his goods, in the hands of whomsoever they may be, in favour of a particular creditor, but permits him to grant by deed a right to seize and sell a specified chattel, or all his goods and chattels generally, on non-payment of a debt. Such a licence to seize gives the licensee no right to follow the goods into the hands of third parties, is available only so long as the goods remain in the debtor's possession and continue his property,(a) and unless coupled with a grant, is revocable though under seal, (b) and is discharged by the grantor becoming bankrupt, or effecting a composition,(c) or by his death.(d) It confers no title to the goods until actual seizure, but when executed it vests the property in the licensee,(e) and if the words specifically include property upon premises to be occupied by the mortgagor during the continuance of the security, might be extended to crops and other chattels on land or premises to be afterwards occupied or built.(f) A licence to seize cannot be assigned or granted to another so as to confer on him a right of seizure.(g)

A stipulation in an agreement that in the event of bankruptcy a man's property shall go over to another, and be taken from his creditors, is void against his trustee; thus, where a building agreement provided that in case the tenant committed default in the building stipulations, or should become bankrupt, all improvements,

(a) Addison on Contracts, 8th ed., 636; Howes v. Ball, 7 B. & C. 481; 1 M. & R. 288.

(b) Wood v. Leadbitter, 13 M. & W. 838; 14 L. J. Ex. 161.

(c) Carr v. Acraman, 11 Exch. 566; 25 L. J. Exch. 90; Thompson v. Cohen, L. R. 7 Q. B. 527.

(d) Campanari v. Woodburn, 15 C. B. 400; 24 L. J. C. P. 13; 1 Jur. N. S. 17.

(e) Hope v. Hayley, 25 L. J. Bank. 155; Congreve v. Evetts, 10 Exch. 298.

(f) Carr v. Allatt, 27 L. J. Ex. 385; Chidell v. Galsworthy, 6 C. B. N. S. 471.

(g) Brown v. Metropolitan Counties' Society, 28 L. J. Q. B. 236; 1 E. & E. 832; 5 Jur. 1028.

materials and other effects on any part of the said land, not demised to him, should be forfeited to the landlord, who was to be at liberty to re-enter and take possession, it was held that as the landlord's claim rested on the bankruptcy, it could not be supported, and the tenant's trustee who had disclaimed the agreement was held justified in seizing the materials.[a]

Licences to seize.

If, however, the agreement confers an immediate equitable interest in the chattels before bankruptcy is contemplated, it prevailed against an execution creditor or the trustee in the bankruptcy of the intended lessee, as where an agreement provided that all materials which should have been brought upon the premises for the purposes of building should be considered as immediately attached and belonging to the premises, and that no part thereof should be removed without the consent of the owner of the land, who in case of default was empowered to take possession of the land and materials; nor was such an agreement within the Bills of Sale Act, 1854, as an assurance of or licence to seize personal chattels; [b] inasmuch as, though a licence to take possession of personal chattels, the possession was not to be taken as security for any debt; thus, where a building agreement between a landowner and a builder contained a stipulation that the landowner, upon the default of the builder in fulfilling his part of the agreement, might re-enter upon the land and expel the builder, and that on such re-entry all the materials therein and about the premises should be forfeited to and become the property of the landowner "as and for liquidated damages," it was held that, the interest of the builder in the materials being a defeasible one, the right of the landowner to seize was not defeated by the commission of an act of bankruptcy by the builder before the seizure was made, that the stipulation in the agreement did not amount to a bill of sale, and that the trustee under the builder's bankruptcy took subject to the rights of the landowner under the agreement. [c] Nor is a building agreement, providing that all building and other materials brought upon the land by the builder, whether affixed to the freehold or not, should become the property of the landlord, within the principal Act as an agreement by which a right in equity is conferred to chattels personal, [d] and such a document, not being a security for the payment of money, is excepted from the operation of the amendment Act. [e]

(*a*) *Exp.* Jay, *re* Harrison, 14 Ch. D. 19; 28 W. R. 449; 42 L. T. 600; 49 L. J. Bank. 47.

(*b*) Blake *v.* Izard, 16 W. R. 108; Brown *v.* Bateman, L. R. 2 C. P. 272; 15 L. T. 658; 36 L. J. C. P. 134; 15 W. R. 350; *Exp.* Dickin, *re* Waugh, 35 L. T. 769; 4 Ch. D. 524; 46 L. J. Bank. 26; 25 W. R. 258.

(*c*) *Exp.* Newitt, *re* Garrud, 16 Ch. D. 522.

(*d*) Reeves *v.* Adie, W. N. 1883, 112.

(*e*) Sec. 3, clause 2 [1882].

A brewer's lease authorising seizure of chattels on default in payment of an account current has been held to require registration;[a] and would be a bill of sale within the Acts.

A mere licence to seize must not be confounded with a grant of future property, which, before the amendment Act, transferred to the mortgagee or purchaser the grantor's beneficial interest as soon as the property was acquired.

By sec. 6 of the principal Act, certain documents by which a power of distress is conferred by way of security for any debt, and whereby rent is payable as a mode of providing for the payment of interest on such debt, are declared bills of sale of any personal chattels seized or taken under such power of distress.

Agreements.

[3] An agreement for a bill of sale, if relied on as an equitable assignment of property, required registration under the Bills of Sale Act, 1854;[b] thus, a document undertaking to hold goods at the disposal of third parties, and to transfer them when required to do so, was held a bill of sale, and so was a letter operating as a transfer of goods by way of pledge.[c] The words of the section limit its application to cases where a right in equity shall be conferred to personal chattels or to any charge or security thereon; thus, a deed by which a debtor covenanted that if the debt was not paid on a day named certain chattels should be charged with it, and that he would, when required, assign them to the creditor as security, was held to require registration as a bill of sale.[b] Where a sum of money is advanced on the faith of an absolute promise by the debtor to give a bill of sale, the sum so advanced is to be considered as advanced on the security of the bill of sale, which stands on the same footing as if given at the time of the advance,[d] but such promise or agreement, if in writing, and relied upon as conferring a security over chattels, will be a bill of sale, and must be registered.[b] But an agreement to give a bill of sale does not require registration where the bill of sale has been given in pursuance of the agreement, and duly registered, although the agreement is relied on to support the *bonâ fides* of the transaction.[e]

Although a mere contract to lend or borrow money on mortgage will not be enforced,[f] specific performance will be decreed of an agreement to execute a mortgage in consideration of a debt due,

(*a*) *Exp.* Hopcraft, *re* Flavell, 14 W. R. 168.

(*b*) Edwards *v.* Edwards, 45 L. J. Ch. 391; 24 W. R. 713; 2 Ch. D. 291; 34 L. T. 472; *exp.* Mackay, *re* Jeavons, L. R. 8 Ch. 643; but see *Exp.* Homan, *re* Broadbent, L. R. 12 Eq. 598; 19 W. R. 1058.

(*c*) *Exp.* Conning, L. R. 16 Eq. 414; 21 W. R. 784; *exp.* Montagu, *re* O'Brien, 1 Ch. D. 554; 24 W. R. 309; 34 L. T. 197; Baghott *v.* Norman, 41 L. T. 787.

(*d*) Harris *v.* Rickett, 4 H. & N. 1; 28 L. J. Ex. 197; Mercer *v.* Peterson, L. R. 3 Ex. 104; 37 L. J. Ex. 54; 16 W. R. 486; 18 L. T. 30; *Exp.* King, 2 Ch. D. 256; 45 L. J. Bank, 109; 24 W. R. 559; 34 L. T. 466.

(*e*) *Exp.* Hauxwell, *re* Hemmingway, 23 Ch. D. 626; 48 L. T. 742; 31 W. R. 711; 52 L. J. Ch. 737.

(*f*) Fisher on Mortgages, 3rd ed. 2; Rogers *v.* Challis, 27 Beav. 175.

or of an advance actually made, unless the money be repaid. (a) It would seem doubtful how far an agreement to give a bill of sale would now confer any security, but it would be evidence of the good faith of a bill of sale afterwards given and registered.

Hiring agreements.

Agreements under what is known as the hire system will not be within the operation of the Acts, for in such cases, when the agreement is in the ordinary form, no right of property at law or in equity passes to the hirer; and when by a written agreement a person hired furniture on the terms of payment by monthly instalments, depositing as collateral security, but without prejudice to the rights under the agreement, promissory notes for the whole amount, which were to become void on seizure, it being provided that in the event of non-payment of any instalment the bailor might, notwithstanding any payments, seize and remove the furniture which on payment of all instalments was to become the hirer's property, until which it was only let on hire and was to remain the property of the bailor, the Court of Appeal held that as no property passed to the hirer until payment of the full amount of the instalments, neither the agreement nor the licence to seize amounted to a bill of sale, and that registration was unnecessary; (b) and a written agreement whereby a trader hired household furniture at a weekly rent, and the owner was empowered to repossess himself of the same upon the hirer becoming bankrupt, was held not to require registration. (c) It should, however, be remembered that goods let to hire are within the doctrine of reputed ownership.

In an agreement for the hire of furniture, the word month means lunar month, although it is to be read calendar month in a mortgage. (d)

A power of distress on non-payment of the hire may be inserted in such an agreement, and is not a fraud on the bankrupt laws; (e) and a demise of premises with the fixtures, machinery, and apparatus thereon, at a rent payable in advance, with a proviso that on non-payment of the rent or non-observance of the covenants the lessors might re-enter, but that if the lessees should punctually pay the rent and observe the covenants, they should, at the expiration of the term, be absolutely entitled to all fixtures and machinery thereby demised, was held not to require registration. (f)

Where, however, goods were left on the premises in the sole occupation of the grantor, under an arrangement that he should

(a) Ashton *v.* Corrigan, 13 Eq. 76; 41 L. J. Ch. 96; Hermann *v.* Hodges, 16 Eq. 18; 43 L. J. Ch. 192.

(b) *Exp.* Crawcour *re* Robertson, 26 W. R. 733; 47 L. J. Bank. 94; 39 L. T. 2; 9 Ch. D. 419.

(c) *Exp.* Emerson, *re* Hawkins, 41 L. J. Bank. 20; 20 W. R. 110.

(d) Hutton *v.* Brown, 45 L. T. 343.

(e) Leman *v.* Yorks. Wagon Co., 50 L. J. Ch. 293; 29 W. R. 466.

(f) *Exp.* Sergeant, *re* Gelder, W N. 1881, 37.

carry on a trade there as servant of the grantee at a weekly salary, and have the use of the goods, they were held to be in the grantor's apparent possession;[a] and a receipt reciting a sale of chattels, and letting them to the vendor for a rent, with a proviso entitling the purchaser to enter and take possession if the rent should be unpaid, or if execution should issue against the goods, was held to be merely a colourable bill of sale;[b] and so it would seem where after an absolute sale the purchaser enters into a hiring agreement with the vendor.[c] Thus, where a person advanced £150 to a trader to pay out an execution, and the trader gave a receipt, written at the foot of an inventory, for £150 for the absolute sale of the "above-mentioned articles of furniture," and on the same day both parties executed a memorandum of agreement letting the goods to the trader for two months for £170, with power to seize and sell on default, and the usual clauses for disposing of the proceeds of sale, but the receipt was not registered, it was held that the two documents constituted a conditional bill of sale.[d]

But a receipt with an inventory given upon a sale out and out by a sheriff's officer is not necessarily within the Bills of Sale Acts, and so it was held where the sheriff's officer, having seized the goods in question under a *fi. fa.* issued against the execution debtor, sold them to the claimant, giving him a receipt for the purchase-money containing an inventory of the goods, the claimant, at the same time, by a written agreement bearing even date with the receipt, letting to the execution debtor the house where the goods had been seized, together with the goods, on a quarterly tenancy, and the execution debtor continued in possession as before.[e] The grounds of the decision would appear to be that the sale was absolute by the sheriff's officer, and the purchaser's title did not depend upon the receipt, which was not the medium of transfer.[f]

Assignments for the benefit of creditors.

(4) An assignment for the benefit of creditors, to be within the exception, must be for the benefit of all the creditors generally,[g] and a deed expressed to be made for certain creditors named therein, with a resulting trust for the grantor, was held to require registration;[h] and a similar deed has been held void under the statute 13 Eliz. cap. 5;[i] but if it will include any creditor who chooses to

(*a*) Pickard *v.* Marriage, 1 Ex. D. 364; 45 L. J. Ex. 594; 35 L. T. 343; 24 W. R. 886.

(*b*) Phillips *v.* Gibbons, 5 W. R. 527: 29 L. T. O. S. 91.

(*c*) *Exp.* Lovering, *re* Jones, L. R. 9 Ch. 621; 43 L. J. Bank. 116; 30 L. T. 622; 22 W. R. 853; *Exp.* Orme, *re* Lloyd, 38 L. T. 328.

(*d*) *Exp.* Odell, *re* Walden, 10 Ch. D. 76.

(*e*) Woodgate *v.* Godfrey, 5 Ex. D. 24; Lincoln Wagon Co. *v.* Mumford, 41 L. T. 655.

(*f*) Marsden *v.* Meadows, 7 Q. B. D. 80.

(*g*) Johnson *v.* Osenton, L. R. 4 Ex. 108; 38 L. J. Ex. 76; 19 L. T. 793; Ashford *v.* Tuite, 7 Ir. C. L. Rep. 91.

(*h*) R. *v.* Creese, 2 C. C. R. 105; 43 L. J. M. C. 51; 29 L. T. 897; 22 W. R. 375.

(*i*) Spencer *v.* Slater, 4 Q. B. D. 13; 48 L. J. Q. B. 204; 27 W. R. 134; 39 L. T. 424.

accept the composition and sign the deed, there being nothing on the face of it by which any creditor is excluded, it will be sufficient; thus, a deed in the form of a deed poll whereby the creditors, "whose names and seals were thereunto subscribed and set," agreed to accept a composition from their debtor, who assigned his property to a surety, was held within the exception of the section.(a) Before the passing of the Bills of Sale Act, where a debtor, pending suit and before execution, being then insolvent, assigned all his effects to trustees for the benefit of his creditors, and possession was immediately taken, the assignment was held valid against an execution creditor,(b) for if a deed is executed for the benefit of one or more creditors, and is not meant as a cloak for retaining a benefit to the grantor, it is not void within the Statute of Elizabeth, although it may operate to the prejudice of some particular creditor, (c) but it would now be invalid unless registered, if not enuring for the benefit of all the creditors of the grantor. An assignment for the benefit of creditors is an act of bankruptcy, but cannot be relied on to ground a petition by parties to the arrangement.(d)

(5) Post-nuptial settlements are not within this exception,(e) but it would seem that the effect of clause 2 of sec. 3 of the amendment Act will in most cases be to exclude them from the operation of that Act, the section excepting from the definition of bills of sale documents given otherwise than by way of security for the payment of money. Registration with the formalities prescribed by the principal Act would appear still to be necessary, and if the object of the settlement is to secure payment of money, the amendment Act will also apply. Marriage settlements.

A duly registered bill of sale, given for valuable consideration, by which a husband assigned to his wife for her separate use furniture which remained in the joint possession of the husband and wife at the time of the former's liquidation, was upheld against his creditors; (f) and property to be acquired after marriage was held protected if in renewal or substitution for that included in a marriage settlement; (g) and so where furniture contracted to be purchased was settled upon the intended wife of the settlor, with power to trustees to renew or substitute other furniture, but the

(a) General Furnishing Company *v.* Venn, 2 H. & C. 153; 32 L. J. Ex. 220; 11 W. R. 756; 8 L. T. 432; 9 Jur. N. S. 550; Boldero *v.* London & Westminster Disct. Co., 5 Ex. D. 47; 28 W. R. 154; 42 L. T. 56.

(b) Pickstock *v.* Lyster, 3 M. & S. 371.

(c) Alton *v.* Harrison, L. R. 4 Ch. 622; 38 L. J. Ch. 669; 21 L. T. 282.

(d) Bamford *v.* Baron, 2 T. R. 594; *Exp.* Stray, 36 L. J. Bank. 7; L. R. 2 Ch. 374; 16 L. T. 250; 15 W. R. 600.

(e) Fowler *v.* Foster, 28 L. J. Q. B. 210; 5 Jur. N. S. 99; Ashton *v.* Blackshaw, 39 L. J. Ch. 205; 9 Eq. 510; 18 W. R. 307; 22 L. T. 197.

(f) *Exp.* Cox, *re* Reed, 1 Ch. D. 302; 24 W. R. 302; 33 L. T. 757.

(g) Duncan *v.* Cashin, L. R. 10 C. P. 554; 44 L. J. C. P. 225; 23 W. R. 561; 32 L. T. 497.

purchase was never completed, the settlor buying other furniture, a memorandum of its substitution being indorsed on the deed, the Court of Appeal held the case within the exception.[a]

But where a trader executed a settlement upon his marriage by which he settled certain specific chattels upon trust for the benefit of his wife and the issue of the marriage, covenanting that all future real or personal estate which he should at any time during the coverture be possessed of or entitled to should be assigned to the trustees upon the trusts thereby declared, it was held that property obtained by the trader while solvent, but subsequent to the marriage, could not be withdrawn from the claims of creditors, and passed to the trustee under his liquidation.[b]

Although a marriage settlement may not be within the section, regard should be had to sec. 91 of the Bankruptcy Act, which avoids the post-nuptial settlement of a trader in certain cases, and provides that any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon, or for his wife or children, of any money or property wherein he had not, at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee.[c] Such settlements may also be impeached under the statute of Elizabeth on grounds which will be found discussed in the notes to sec. 8.

Shipping transfers.

[6] This exception has been held to apply, although the ship is unfinished; and when a shipbuilder, at a creditor's request, lodged with him as security for a debt the builder's certificate, which, describing the ship and her engines, stated that she had been built for the creditor, but in fact she was not completed, nor were her engines in position, it was held that the creditor had obtained an equitable mortgage of the debtor's interest in the ship, which did not require registration [d]; neither does an assignment of a ship, although not in the form given by the Merchant Shipping Act, 1854.[e]

What are personal chattels.

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery,[1] and (when separately

(a) Courcier *v.* Bardili, 27 Sols. J. 276.

(b) *Exp.* Bolland, *re* Clint, 43 L. J. Bank. 16; 17 Eq. 115; 29 L. T. 543; 22 W. R. 152.

(c) *See* also sec. 47, Bankruptcy Act, 1883, which applies to both traders and non-traders.

(d) *Exp.* Winter, *re* Softley, 44 L. J. Bank. 107; 20 Eq. 746; 33 L. T. 62; 24 W. R. 68.

(e) Union Bank of London *v.* Lenanton, 3 C. P. D. 243; 47 L. J. C. P. 409; 38 L. T. 699.

assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow,[2] nor shares or interests in the stock, funds, or securities of any government, or in the capital of property of incorporated or joint stock companies, nor choses in action,[3] nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

(3) Page 52.

[1] Under the repealed Acts these words qualified the whole section, which included only goods which could have been delivered and removed at the time of sale, and were, nevertheless, left in the apparent possession of the original owner.[a] Pictures,[b] and implements of trade,[c] were held to be personal chattels, but heirlooms[d] were not within that definition.

[2] A considerable alteration in the law is effected by this clause. Growing crops. Growing crops were not within the Bills of Sale Act, 1854,[a] and where a mortgagor presented a petition for liquidation, and his trustee went into possession of the mortgaged lands, and commenced cutting the growing crops, the mortgagee putting a man in possession, and requiring the trustee to give up possession, which he refused to do, an injunction was granted restraining the trustee from cutting crops, and from removing those cut after the mortgagee's demand of possession.[e]

Although growing crops are not within the Acts, unless separately assigned, as soon as they are severed they become personal chattels, and are not protected by an unregistered assignment.[f]

(*a*) Brantom *v.* Griffiths, 2 C. P. D. 212; 25 W. R. 313; 46 L. J. C. P. 408; 36 L. T. 4; *Exp.* Payne, *re* Cross, 11 Ch. D. 539; 27 W. R. 808; 40 L. T. 563.

(*b*) *Exp.* Castle, 3 M. D. & D. 117.

(*c*) Clark *v.* Crownshaw, 3 B. & Ad. 804.

(*d*) Shaftesbury *v.* Russell, 1 B. & C. 666; 3 D. & R. 84.

(*e*) Bagnall *v.* Villar, 12 Ch. D. 812; 28 W. R. 212; 48 L. J. Ch. 695.

(*f*) *Exp.* National Mercantile Bank, *re* Phillips, 29 W. R. 227; 16 Ch. D. 104; 44 L. T. 265; 50 L. J. Ch. 231.

A bill of sale of future growing crops has been held to pass the property in them on their coming into existence.(a)

Fixtures.

It was formerly held that fixtures were chattels only where so defined, but a bill of sale of fixtures required registration by the express words of the repealed statute, and much uncertainty arose as to whether a mortgage of land, by which fixtures passed, was within the provisions of the Act. The following rules are deducible from the cases :—A legal or equitable (b) mortgage of realty or leaseholds passed trade or tenants' fixtures as a part of the land, (c) whether on the land at the time of the mortgage or subsequently affixed,(d) and did not require registration.(e) A deposit of a lease, also, covered tenant's fixtures;(f) but a mere deposit of an assignment of leaseholds and fixtures did not confer any right to trade fixtures against a trustee or execution creditor, and a registered assignment of the fixtures was necessary in order to perfect the mortgagee's title.(g) A mortgage of realty with fixtures required registration, if the mortgagee had power to sever and sell separately from the land,(h) or if the fixtures were separately assigned by the operative part of the deed.(i)

Fixtures and growing crops.

By sec. 7 of the principal Act, which applies to all deeds or instruments including fixtures or growing crops executed before or after the commencement of that Act, no fixtures or growing crops shall be deemed to be separately assigned or charged, by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold, leasehold, (or copyhold)(j) interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person. It is apprehended that if an intention appears to charge fixtures as distinct from the land or building, the former rule will

(a) Clements *v.* Matthews, 47 L. T. 251.

(b) *Exp.* Barclay, *re* Gawan, 5 De G. M. & G. 403.

(c) Meux *v.* Jacobs, L. R. 7 H. L. 481; 44 L. J. Ch. 481; 23 W. R. 526; 32 L. T. 171; Holland *v.* Hodgson, 41 L. J. C. P. 146; L. R. 7 C. P. 328; 26 L. T. 709; 20 W. R. 990; Longbottom *v.* Berry, 10 B. & S. 852; L. R. 5 Q. B. 123; 39 L. J. Q. B. 37; 22 L. T. 385.

(d) Walmsley *v.* Milne, 7 C. B. (N. S.) 115; 29 L. J. C. P. 97; 6 Jur. N. S. 125.

(e) Mather *v.* Fraser, 25 L. J. Ch. 361.

(f) Williams *v.* Evans, 23 Beav. 239; *Exp.* Broadwood, 1 M. D. & D. 631.

(g) *Exp.* Tweedy, *re* Trethowan, 5 Ch. D. 559; 46 L. J. Bank. 43; 25 W. R. 399; 36 L. T. 70; *sed quære.*

(h) *Exp.* Daglish, L. R. 8 Ch. 1072; 42 L. J. Bank. 102; 29 L. T. 168; 21 W. R. 893; *Exp.* Barclay, *re* Joyce, L. R. 9 Ch. 576; 43 L. J. Bank. 137; 22 W. R. 608; 30 L. T. 479; *Exp.* Alexander, *re* Eslick, 4 Ch. D. 503; 46 L. J. Bank. 30; 25 W. R. 260; 35 L. T. 912.

(i) Begbie *v.* Fenwick, L. R. 8 Ch. 1075; 19 W. R. 402; 24 L. T. 58; Hawtrey *v.* Buttlin, L. R. 8 Q. B. 290; 42 L. J. Q. B. 163; 21 W. R. 663; 28 L. T. 532.

(j) Mather *v.* Fraser, 25 L. J. Ch. 361; 2 K. & J. 536.

still apply;[a] and it has been decided that after a severance of growing crops by the mortgagor they become chattels subject to the Act.[b]

By sec. 6 of the amendment Act, a bill of sale will still be effectual in respect of growing crops separately assigned or charged, where such crops were actually growing at the time when the bill of sale was executed, or of fixtures separately assigned or charged, and any plant or trade machinery on premises in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to the bill of sale, notwithstanding the crops, fixtures, plant, or machinery assigned are not so specifically described, and were not the property of the grantor at the time of the execution of the bill of sale.

Fixtures.

It here becomes material to consider what are fixtures within the section, for an assignment of personal chattels, although coupled with an interest in realty, will still require registration. In its primary sense the word fixtures denotes anything fastened to or connected with the freehold. Articles no further attached to the land than by their own weight are generally to be considered as mere chattels, unless the circumstances are such as to show that they were intended to be part of the land, the onus of proving which rests on those who assert that they have lost their character of chattels; thus a granary resting upon straddles built into the ground, but not attached to it, except by its own weight, is not a fixture.[c] On the other hand, articles affixed to the freehold even slightly, whether by nails, screws, solder, or other permanent means, or by being fixed in the soil, are fixtures; thus doors, windows, rings, keys, are fixtures,[d] and so are chimney pieces, stoves or coppers,[e] unless it clearly appears that the articles have all along been treated as chattels, which must be proved by the person contending that they have never become fixtures.[f]

A mortgage containing an attornment clause passed tenant's fixtures placed on the premises after the date of the mortgage, for the mortgagee does not cease to be mortgagee because he is made a landlord.[g]

A lessee who mortgages tenant's fixtures cannot defeat his grant by a voluntary surrender of his lease, and the mortgagee has a right, notwithstanding the surrender, to enter and sever the fixtures.[h]

(*a*) Waterfall *v.* Penistone, 6 E. & B. 876; 3 Jur. N. S. 15; 26 L. J. Q. B. 100.

(*b*) *Exp.* National Mercantile Bank, *re* Phillips, 29 W. R. 227.

(*c*) Wiltshear *v.* Cottrell, 1 E. & B. 674.

(*d*) Liford's Case, 11 Co. 50.

(*e*) Darby *v.* Harris, 1 Q. B. 895; 1 G. & D. 234; 5 Jur. 988.

(*f*) Mather *v.* Fraser, 2 K. & J. 536; Bain *v.* Brand, 1 App. Cases, 762; Holland *v.* Hodgson, L. R. 7 C. P. 335.

(*g*) *Exp.* Punnett, *re* Kitchin, 16 Ch. D. 226; 29 W. R. 129; 50 L. J. Ch. 212; 44 L. T. 226.

(*h*) London Loan & Discount Co. *v.* Drake, 6 C. B. N. S. 798; 28 L. J. C. P. 297; 5 Jur. N. S. 1407.

Where, however, the grantor, having assigned growing crops, agreed with his landlord, who had distrained for rent, to surrender the tenancy and give possession of the land and crops in consideration of the distress being withdrawn, on which the landlord withdrew, and on the surrender being completed took possession and cultivated the crops, it was held that the mortgagee had no right of action against him, his legal title being complete by the surrender. (a)

Trade machinery

Trade machinery is declared personal chattels by sec. 5 of the principal Act, except as to the machinery and effects thereby expressly excluded from the definition of trade machinery, which are not to be deemed personal chattels within the Act.

Choses in action.

(3) Book-debts are not chattels within the Acts, but debts due to a grantor in the way of his trade, and included in a bill of sale, will remain in his reputed ownership unless notice is given of their assignment. Book-debts are such debts accruing in the ordinary course of a man's trade as are usually entered by a trader in his trade books. (b) If future book-debts are assigned, a separate instrument of transfer is recommended.

By the Judicature Act, 1873, sec. 25, sub-sec. 6, an absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor. When notice of the assignment has been given, the power of attorney for collection of debts assigned may now, therefore, be safely omitted. Where notice is necessary to complete a title, as between particular assignees, it is also essential as against trustees in bankruptcy. (c)

A share in a partnership is a chose in action, and is not within the expression "personal chattels," although including plant and stock-in-trade. (d) Assignments of chose in action, with their validity against assignees and others, will be found discussed in the notes to "Ryall v. Rowles," 1 Ves. 348; 2 W. & T. L. Cases, 729, 5th ed.

(a) Clements *v.* Matthews, W. N. 1883, 86.

(b) M'Evoy *v.* Bent, 11 W. R. 314; Shipley *v.* Marshall, 14 C. B. N. S. 566.

(c) Daniel *v.* Freeman, 11 Ir. R. Eq. 233.

(d) *Exp.* Fletcher, *re* Bainbridge, 47 L. J. Bank. 70; 8 Ch. D. 218; 26 W. R. 439; 38 L. T. 229.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

What is apparent possession.

Apparent possession.

This definition, although not expressly repealed by the amendment Act, will cease to have any practical value as affecting bills of sale executed on or after the 1st of November, 1882, and given by way of security for the payment of money, for the validity of such a bill of sale does not now depend on the question whether the chattels it comprises were or were not in the grantor's apparent possession.[a] As, however, the doctrine of apparent possession appears still to apply to bills of sale given otherwise than as security, and many questions must still arise under the repealed sec. 8 of the principal Act, the cases on the subject are here noted. By that section, a bill of sale not registered within the time and in the manner prescribed was to be deemed fraudulent and void against trustees and execution creditors of the person whose chattels were comprised in such bill of sale, so far as regards chattels which at or after the time of such person's bankruptcy or liquidation, or of execution levied, and after seven days from the time of giving the bill of sale, were in such person's possession or apparent possession.

It should be noted that two classes of apparent possession are mentioned in the sub-section:—firstly, where the chattels subject to the bill of sale are upon premises occupied by the grantor, and secondly, where they are used and enjoyed by him in any place whatsoever. In the first class there must be an actual occupation, the words "occupied by him" meaning that the grantor should occupy in the ordinary sense of the term, and not including cases where he has merely an interest in a lease; and when the grantor of an unregistered bill of sale was tenant of rooms where the goods comprised in it were placed, but resided elsewhere; and having made default in payment, gave up the keys of the rooms to the grantee, who opened the rooms and put his name on some of the goods which, however, remained on the premises, it was held that the grantor did not occupy the rooms, and that the goods were not to be deemed in his apparent possession.[b] Again, where the grantor, who had by an unregistered

(a) Sec. 8 [1882].

(b) Robinson *v.* Briggs, L. R. 6 Exch. 1; 40 L. J. Ex. 17; 23 L. T. 395.

deed mortgaged a freehold house and furniture to secure a debt and interest, remained in possession, attorning to the mortgagee, and subsequently let the house furnished with the consent of the mortgagee, to whom a portion of the rent was to be paid by the incoming tenant, who took possession; on the grantor's bankruptcy it was held that the section did not apply, for the goods were not upon premises in the occupation of the grantor, nor were they used or enjoyed by him.(a)

Apparent possession.

The doctrine of apparent possession differs from that of order and disposition under the Bankruptcy Act, and the consent of the true owner is here immaterial. He may demand and endeavour to take possession of the goods; but to avoid the section, there must be something done which takes them plainly out of the grantor's control in the eyes of everybody who sees them.(b)

The doctrine of actual and formal taking of possession has thus been laid down: "The distinction between formal and real possession seems to have been grounded upon the authority of some recent decisions at law which were then fully considered. The distinction is this; that if a bailiff is simply put in possession and remains in possession so as to prevent the removal of the goods, but allows everything to go on just as it did before, permitting everything to be used by the debtor and his family, (c) then the goods still remain in the apparent possession of the debtor. There must be something done which, in the eyes of everybody who sees the goods, or who is concerned in the matter, plainly takes them out of the apparent possession of the debtor."(d) This decision is illustrated by the following cases:—

In *ex parte* Lewis, *re* Henderson, (e) the holder of an unregistered bill of sale of household furniture took possession by sending in a broker's man, who remained in the house and slept in an upper room, but did not remove any of the furniture, or interfere with the use of it by the grantor, who went on using it as before. Placards were posted in the neighbourhood announcing a sale of furniture; but with the exception of reference to a firm of solicitors for particulars, there was nothing from which it would be inferred that the sale was not by the grantor himself. It was held that the goods remained in the apparent possession of the grantor, that the possession by the broker's man was a merely formal possession, and that posting the placards, not showing that the sale was under a bill of sale, could not take the goods out of the

(a) *Exp.* Morrison, *re* Westray, 28 W. R. 524; 42 L. T. 158.

(b) Ancona *v.* Rogers, 46 L. J. Ex. 121; 35 L. T. 115; 1 Ex. D. 285; 24 W. R. 1000.

(c) *Exp.* Hooman, *re* Vining, L. R. 10 Eq. 63; 39 L. J. Bank 4; 18 W. R. 450; 22 L. J. 179; *Exp.* Nicholson, *re* Anderson, 37 L. T. 40.

(d) *Exp.* Jay, *re* Blenkhorn, L. R. 9 Ch. 697; 22 W. R. 907; 31 L. T. 260; 43 L. J. Bank. 122, per Mellish, L. J.

(e) L. R. 6 Ch. 626; 19 W. R. 835; 24 L. T. 785.

grantor's apparent possession; but when the grantee takes possession of the goods and advertises them for sale as the goods of the grantor sold under a bill of sale, they would no longer be in his apparent possession, though remaining in his house.(a)

Apparent possession.

In Smith *v.* Wall,(b) when possession was taken and the business was stopped, the door of the house was locked, the key being kept by the plaintiff's man in possession, and placards were posted outside the house and about the neighbourhood announcing a sale under a bill of sale, but the debtor, who was an infirm old man, was allowed to remain in the house, not being able to get lodgings elsewhere, it was held that more than formal possession had been taken. Where the assignee, under a bill of sale, put a man into possession of the premises to carry on for his benefit the grantor's business, and the man in possession seized the whole stock, employed new servants while retaining some who had been on the premises before, buying fresh stock to a large amount, and the grantor ceased to be on the premises, but his name was still over the door, and his daughter continued to reside there, it was held that the goods did not remain in his apparent possession; for formal possession within the section means that possession should have no effect if the grantor remains in the house and in use and enjoyment of the goods, although some person is put in to hold joint possession;(c) thus, where a man was put in possession of the goods which were in a house belonging to the grantor, who had a key and went in and out as he pleased, although he did not sleep there, his apparent possession was held to continue;(d) but if the grantee openly, really and truly takes possession, then, although the grantor remains in possession, the Act does not apply.(e) Accordingly, when the man placed in possession of the grantor's shop and premises locked them up at night, the servants in the shop being dismissed, and the bill of sale holder made an inventory of the goods, it being notorious in the neighbourhood that possession had been taken, the Chief Judge decided that the bill of sale holder had seized in such a way as to show he was dealing with his own property, and had done all that was incumbent on him to take the goods out of the grantor's apparent possession, although it was in evidence that the man in possession did not appear in the shop, but remained in a warehouse out of sight of customers, the business going on as usual, and the shop being served by the grantor and his son.(f) This must, however, be considered an extreme case.

(a) Emmanuel *v.* Bridger, L. R. 9 Q. B. 286; 43 L. J. Q. B. 96; 30 L. T. 195; Gough *v.* Everard, 2 H. & C. 1; 32 L. J. Ex. 210; 8 L. T. N. S. 363; 11 W. R. 702.

(b) 18 L. T. 182.

(c) Wardall *v.* Smith, 1 Camp. 333; Vicarino *v.* Hollingsworth, 20 L. T. 362.

(d) Seal *v.* Claridge, 7 Q. B. D. 516; 50 L. J. Q. B. 316; 29 W. R. 598; 44 L. T. 501.

(e) Davies *v.* Jones, 10 W. R. 779; 7 L. T. N. S. 130.

(f) *Exp.* Mortlock, *re* Basham, W. N. 1881, p. 161.

Apparent possession.

For the purposes of the section, goods in the possession of a bailee for the grantor, such as a gentleman's plate delivered to his banker, or his furniture lodged in a warehouse, are in the possession of the grantor himself; and so long as the grantor is having the goods kept for him and is exercising dominion over them the section will apply.(a) Thus, where the grantor managed a business as servant to the grantee at a weekly salary, and was allowed to reside in the house where the business was carried on, and, as part of his salary, to use the furniture assigned by the bill of sale, the grantee residing elsewhere, it was held that the goods remained in his apparent possession;(b) but a chattel pledged is not in the apparent possession of the pledgor, for he has no power of disposal or to act as owner.(c)

Where a person, being in custody, gave a bill of sale over certain jewels in the hands of the police, they were held to remain in his apparent possession,(d) but goods comprised in an unregistered bill of sale in the possession of the sheriff under an execution are not in the apparent possession of the grantor, even although the mortgagee has himself taken no possession,(e) and so it would seem in the case of seizure by a duly appointed receiver.(f) Such possession, however, must be an actual visible possession; thus, if the sheriff's officer took possession in the disguise of a livery servant of the grantor it would not be sufficient.(g)

It is not necessary that the grantee should have an exclusive possession to take the goods out of the grantor's apparent possession;(h) and actual possession taken by the grantee of an unregistered bill of sale, even though taken wrongfully, may exclude the operation of the Act; but a wrongdoer or trespasser, as for example, a bill of sale holder, who seizes without a proper demand, must take actual physical possession to remove the goods from the grantor's apparent possession, although where possession is taken legally it will be extended by construction of law beyond the actual physical possession, and a taking possession of one of the things comprised in the deed may amount to possession of all.(i)

(a) Ancona *v.* Rogers, 1 Ex. D. 285.

(b) Pickard *v.* Marriage, 1 Ex. D. 364.

(c) Lincoln Wagon Co. *v.* Mumford, 41 L. T. 655, per Stephen, J.

(d) *Exp.* Newsham, *re* Wood, 40 L. T. 104.

(e) *Exp.* Saffery, *re* Bremner, 16 Ch. D. 668; 44 L. T. 324; 29 W. R. 749; overruling on this point *Exp.* Mutton *re* Cole, 41 L. J. Bank, 57; L. R. 14 Eq. 178; 20 W. R. 882; 26 L. T. 916.

(f) Taylor *v.* Eckersley, 5 Ch. D. 740; 25 W. R. 527; 36 L. T. 442.

(g) *Exp.* Saffery, *re* Bremner, 16 Ch. D. 668.

(h) Burroughs *v.* Williams, L. J. N. 1878, p. 127, per Hall, V.C.; Davies *v.* Jones, 10 W. R. 779.

(i) *Exp.* Fletcher, *re* Henley, 25 W. R. 573; 36 L. T. 758; 46 L. J. Bank. 93; 5 Ch. D. 809, questioning Furber *v.* Finlayson, 24 W. R. 370.

Sec. 4. [1878.]

"Prescribed" means prescribed by rules made under the provisions of this Act. Sec. 4. [1882.]

By section 21 of the principal Act, rules may be made and altered from time to time, under the provisions of the Judicature Acts. Certain rules have been issued which will be found noted in their places. Rules.

4. (1882.) Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described. Bill of sale to have schedule of property.

A schedule was not requisite before the amendment Act, but was frequently adopted for greater accuracy, being prepared in such a form as not to limit the general words of the deed. It will now be compulsory in all cases within the amendment Act, and must be written on or annexed to the bill of sale, and a copy filed.[a] The chattels intended to be assigned must be described, not generally, but should be specified so as to be capable of identification;[b] and a full inventory or catalogue is recommended. The schedule.

It is difficult to reconcile the two clauses of the section, by the first of which the bill of sale shall have effect only in respect of chattels specifically described, while the second saves its avoidance against the grantor in respect of chattels not fulfilling that condition; and it will also be observed that in the statutory form, which by sec. 9 of the amendment Act is compulsory, the property assigned is only that specifically described. It may be that the latter clause of the section qualifies the first, and that sec. 9 must be read with this exception. Another construction is that assignments of property not specifically described, although not void as against the grantor, operate only as a licence to seize and have no effect by grant.

By sec. 6 of the amendment Act, a bill of sale shall not be void for want of specific description in the schedule of any growing crops separately assigned or charged where such growing crops were actually growing at the time when the bill of sale was executed, or any fixtures separately assigned or charged, and any

(*a*) Sec. 10, sub-sec. 2 (1878).

(*b*) *See* Belding *v.* Read, 3 H. & C. 955; 13 L. T. 66; 13 W. R. 867; 11 Jur. N. S. 547; 34 L. J. Ex. 12; Jarman *v.* Woolloton, 3 T. R. 618.

plant or trade machinery, when such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like articles specifically described in the schedule to the bill of sale.

The schedule.

The decisions under the old law would appear to some extent still applicable. Although a list of the chattels either in the deed or in the schedule was not necessary, such a specific description as would enable them to be identified being sufficient, where a deed contained a covenant to make an inventory, but none was ever made, then its absence was, with other circumstances, left to the jury as evidence of fraud.(a) Where, however, the original schedule was destroyed, filing a copy was held sufficient.(b)

Under the repealed Acts it was held that the schedule controlled the general words of the deed; thus, the words "goods and chattels" or "effects" which, alone, would include the grantor's whole personal estate,(c) might be cut down and qualified by the particular description in the schedule:(d) and where a bill of sale purported to assign all the household goods and furniture of every kind and description whatsoever in a house, more particularly mentioned and set forth in an inventory or schedule of even date, and given to the mortgagee upon the execution thereof, but the inventory did not specify all the goods and furniture in the house, it was held to operate only as an assignment of the goods and furniture specified in the inventory.(e)

Neither could a schedule enlarge the deed where the words of the latter were precise; thus, when to a mortgage of a foundry with the engines, fixtures, machinery, tools and working plant thereon more particularly enumerated and described in an inventory to be signed by the parties, and to be read and construed as forming part of the deed, was annexed an inventory which mentioned stock-in-trade, as to which the deed was silent, it was held the stock-in-trade did not pass, James, L. J., remarking, that even if an express intention to include articles not coming within the terms of the deed had been shown by a separate writing, that could not make the deed operate in a way inconsistent with its plain terms, however it might lay ground for rectifying it.(f)

(a) Dewey *v.* Bayntun, 6 East, 257.

(b) Green *v.* Attenborough, 3 H. & C. 468; 34 L. J. Ex. 88; 13 W. R. 185; 11 L. T. 513.

(c) Kendall *v.* Kendall, 4 Russ. 360.

(d) Harrison *v.* Blackburn, 34 L. J. C. P. 109; 17 C. B. N. S. 678; 13 W. R. 135.

(e) Wood *v.* Rowcliffe, 6 Exch. 407; 20 L. J. Ex. 285; Mee *v.* Parren, 15 L. T. N. S. 320.

(f) *Exp.* Jardine, *re* McManus, L. R. 10 Ch. 322; 23 W. R. 382; 31 L. T. 802.

The schedule.

If there was an adequate and sufficient description of what was meant to pass, a subsequent erroneous addition would not vitiate it, and where a bill of sale assigned all the goods, &c., in certain premises and more particularly described in the schedule, it was held that the large words in the body of the deed were not limited by the schedule, which only described a part of the goods, the schedule being merely by way of further description;[a] and this rule was extended so as to include goods bought and inserted in the schedule before, but not upon the premises until after the execution of a bill of sale which expressed to assign all the furniture in a house, and comprised in a schedule annexed.[b] Where, however, the defendant bound himself under a penalty to deliver to the plaintiff the whole of his mechanical pieces as per schedule annexed, it was held that the schedule formed part of the deed, without which it would be insensible;[c] but upon an assignment of all and every the household goods, &c., the particulars whereof were stated to be more fully set forth in an inventory signed by the grantor, and annexed thereto, although no inventory existed, it was nevertheless held that the assignment was effectual, it appearing that the particulars of the chattels comprised in the deed could be ascertained.[d]

Probably, under the amendment Act, if chattels were omitted from the schedule by mistake, the Court might allow it to be rectified, and would extend the time for registration under sec. 14 of the principal Act; or for greater caution, a new bill of sale might be given of the chattels omitted.

The Stamp Act, 1870, imposes a duty on every schedule or inventory not indorsed upon or annexed to the bill of sale,[e] but if a bill of sale referring to a schedule of things sold is complete and intelligible without it, it might have been read, though the schedule, being unstamped, was inadmissible; thus, when there was tendered in evidence a bill of sale and schedule, the former assigning all the goods, &c., in and about certain premises where the grantor resided, the chief articles whereof were stated to be more particularly described and enumerated in a certain schedule annexed, but the schedule was not annexed to the deed, and was inadmissible for want of a stamp, it was held that the bill of sale was admissible in evidence without the schedule:[f] nor was a deed legally stamped vitiated by referring to an inventory which was not stamped.[g]

(*a*) Baker *v.* Richardson, 6 W. R. 663; Cort *v.* Sager, 3 H. & N. 370.
(*b*) Sutton *v.* Bath, 1 F. & F. 152.
(*c*) Weeks *v.* Maillardet, 14 East, 568.
(*d*) England *v.* Downs, 2 Beav. 522; 9 L. J. Ch. 313; 4 Jur. 526.
(*e*) See Note to sec. 18 [1878].
(*f*) Dyer *v.* Green, 1 Exch. 71; 16 L. J. Ex. 239.
(*g*) Duck *v.* Braddyll, 13 Price, 455; M'Clel. 217.

Bill of Sale not to affect after-acquired property.

5. (1882.) Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto, of which the grantor was not the true owner at the time of the execution of the bill of sale.

The interest of the true owner may, it would seem, be legal or equitable; [a] and to the extent of his interest a mortgagee, pawnee, or bailee having a lien, would probably be deemed the true owner. [b]

The effect of this and the preceding section will be to avoid, except as against the grantor, assignments of property not specifically described in the schedule, or which, although so specifically described, did not belong to the grantor at the time of executing the bill of sale, subject to the qualification of sec. 6 of the amendment Act, by which a bill of sale is not void in respect of any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed, and any fixtures separately assigned or charged, and any plant or trade machinery, where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place, in substitution for any of the like fixtures, plant, or trade machinery, specifically described in the schedule to the bill of sale, although such crops, fixtures, plant, or trade machinery did not belong to the grantor at the time of the execution of the bill of sale; and although such substituted plant, fixtures, or machinery are not specifically described in the schedule. It will be observed that the section does not protect additions to the property specifically described. As book-debts are not chattels within the Acts, an assignment of book-debts hereafter to accrue due would seem still to be valid, subject to the provisions of sec. 9 of the amendment Act. Assignments of after-acquired property not specifically described in the schedule are not void against the grantor. [c]

This and the preceding section seem to be aimed at bills of sale covering a floating stock-in-trade, which had been upheld in several cases; but under the amendment Act these will no longer be any tangible security.

After-acquired property.

The law relating to assignments of after-acquired property by way of security is thus practically repealed, except in questions

(*a*) *Exp.* Union Bank of Manchester, *re* Jackson, 12 Eq. 354; 40 L. J. Bank, 57.
(*b*) Ryall *v.* Rolle, 1 Atk. 169.
(*c*) Sec. 4 (1882).

between grantor and grantee; but as these will constantly arise, and as the former law still applies to bills of sale registered before the commencement of the amendment Act, its principles must still be considered.

After-acquired property.

Of the questions arising upon bills of sale, one of the most frequent has been how far the instrument covers chattels acquired subsequently to its execution. "It is a common learning in the law," says Perkins in his "Profitable Book,"(a) "that a man cannot grant that which he hath not; and therefore if a man grant a rent charge out of the manor of Dale, and in truth he hath nothing in that manor, and after he purchases the same manor, yet he shall hold it discharged." The rule was modified so far as to permit assignments of property having what was termed a potential existence, being the natural or expected increase of something already belonging to the grantor, as the crop of hay to be grown in his field, the wool to be clipped from his flock, the milk to be yielded by his cow, of which a valid sale might be made at law;(b) but an assignment of chattels to be thereafter acquired, in which there was neither actual nor potential property, would have been inoperative unless ratified after acquisition of the subject of the assignment, or accompanied by a licence to seize, acted upon by the vendee.(c) When, however, the licence to seize was executed by taking possession, the effect was the same as if the grantor had himself delivered possession.(d)

But in equity a different rule prevails, and a contract for a valuable consideration to transfer property to be afterwards acquired, provided it is one which might be the subject of a decree for specific performance, transfers to the vendee or mortgagee the beneficial interest in the property as soon as it is acquired, without any seizure or ratification;(e) and it may now be considered settled law that where on the face of an assignment of personalty it is plain that it was intended to operate as a continuing security, and to apply to property to be afterwards acquired, and substituted for, or in addition to that which was originally assigned, it will, if the words are capable of such a construction, be so applied; thus, where the tenant for years of a farm, being indebted to his landlord, assigned to him by deed all his household goods, live stock, hay and corn, as well in stock as then growing upon the farm, utensils and implements of husbandry, and also all his tenant-right and interest yet to come

(a) Sec. 65, and see Lunn *v.* Thornton, 1 C. B. 379; 14 L. J. C. P. 161; 9 Jur. 350.

(b) Com. Dig. Grant, C. D.

(c) Carr *v.* Allatt, 27 L. J. Ex. 385. Licet dispositio de interesse futuro sit nutilis tamen potest fieri declaratio precedens quæ sortiatur effectum interveniente novu actu. Bac. Max. 14; Hope *v.* Hayley, 5 E. & B. 830; 25 L. J. Q. B. 155; 2 Jur. N. S. 486.

(d) Congreve *v.* Evetts, 10 Ex. 298; 23 L. J. Ex. 273; 18 Jur. 655; Chidell *v.* Galsworthy, 6 C. B. N. S. 471.

(e) Holroyd *v.* Marshall, 10 H. L. Cases 191; 33 L. J. Ch. 193; 11 W. R. 171; 7 L. T. N. S. 172; 9 Jur. N. S. 213.

and unexpired in and to the farm and premises, and granted to the landlord licence and authority at any time to enter upon the farm and take, carry away, and sell the goods, &c., thereby assigned, it was held against an execution creditor that, under this assignment, the tenant's interest in crops grown in future years of the term passed to the landlord, as within the meaning of the words tenant-right yet to come and unexpired.[a]

Holroyd v. Marshall.

This rule will be found considered in Holroyd v. Marshall,[b] where A. by deed assigned to B. all the machinery in and about a certain mill; and it was thereby provided that all the machinery which during the continuance of the security should be fixed or placed in the mill in addition to or substitution for the former machinery, should be subject to the trusts of the assignment, and A. undertook to do all that was necessary to vest the substituted and added machinery in B. In delivering judgment, Lord Westbury said, "If a vendor or mortgagor agreed to sell or mortgage property, real or personal, of which he was not possessed at the time, and he received the consideration for the contract, there was no doubt that a Court of Equity would compel him to perform the contract, and that the contract would, in Equity, transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired, assuming that the supposed contract was one of that class of which a Court of Equity would decree the specific performance."

Reeve v. Whitmore.

Contrasted with this case is Reeve v. Whitmore,[c] where the lessee of a brickfield executed a bill of sale of the bricks, &c., then in and upon the premises, with a proviso that the lessee should have the use and enjoyment until default, or the expiration of one day after notice in writing requiring possession; and the deed contained a power of entry and sale; and the lessee gave and granted to the grantee, his executors, &c., or his or their agents, licence at all times during the continuance of the security to enter on the premises, and there remain, and seize and hold possession of the property then on the premises as if the same formed part of the chattels thereby assigned. Lord Westbury decided that the bill of sale operated only as an assignment of the property on the premises at the time of its execution, and that although a contract to assign may, in Equity, operate as an assignment, yet in order to do so it must purport to confer an interest in the future chattels immediately, by its own force, without the necessity for any further act of the assignee upon the future chattels coming into existence; and therefore an assignment of existing chattels, coupled with words amounting to a mere licence to seize after-acquired property, will

(a) Petch v. Tutin, 15 M & W. 110; 15 L. J. Ex. 280.
(b) 10 H. L. Cases, 211.
(c) 33 L. J. Ch. 63; 12 W. R. 113; 9 L. T. 311.

not operate as an assignment of the latter.[a] Thus a written instrument whereby a person charged all present and future personalty was held not to cover after-acquired property.[b]

After-acquired property.

In a subsequent case it was held that for the contract to operate as an assignment, the chattels must be so specifically described as to be identified; thus, a fluctuating stock-in-trade, being too undetermined to be the subject of a decree for specific performance, was held not to pass by an assignment of "all household furniture, plate, linen, china, glass, stock, cattle, horses, farming implements, crops, book-debts, and all other the grantor's personal estate whatsoever then being, or thereafter to be, upon or about his dwelling-house, farm and premises, or elsewhere in the Kingdom of Great Britain;"[c] but it may be that, if the bill of sale had purported to assign, amongst other things, all the stock-in-trade used upon or in connection with the grantor's business, it would have been otherwise; thus an assignment of the stock-in-trade then in certain specified premises, and also the stock-in-trade which should or might at any time during the continuance of the security be brought into the premises, or be appropriated to the use thereof, either in addition to or in substitution for stock-in-trade therein at the date of the bill of sale, has been held sufficient to pass the property in stock-in-trade afterwards brought into the premises in addition to or in substitution for that previously there.[d] A bill of sale, whereby the grantor assigned the growing crops then in and about certain specified premises, and also the growing crops which at any time thereafter should be in or about the same or any other premises of the grantor during the continuance of the security, was held to pass the property in future growing crops on the premises named, on their coming into existence.[e]

Where a bill of sale assigned the "buildings and erections, machinery and engines, boilers, cranes, pipes, tanks, pans, plant, implements, apparatus, utensils, trade fixtures, and fixed and moveable chattels and effects then standing and being in and upon, or belonging to or used in connection with the said refinery and the buildings connected therewith, and which were particularly specified and described in a certain inventory signed by the parties, or which should thereafter be in or upon the said premises," and execution was levied on certain machinery, plant, fixtures, &c., on and used in connection with the refinery and premises, but which had been placed there since the date of the bill of sale

(a) See also Collyer *v.* Isaacs, 19 Ch. D. 342; 30 W. R. 70; 51 L. J. Ch. 14; 45 L. T. 567.

(b) Tadman *v.* D'Epineuil, 20 Ch. D. 758; 47 L. T. 157; 30 W. R. 702.

(c) Belding *v.* Read, 3 H. & C. 955.

(d) Lazarus *v.* Andrade, 5 C. P. D. 318; 43 L. T. 30; 29 W. R. 15; 49 L. J. C. P. 847.

(e) Clements *v.* Matthews, 47 L. T. 251.

and were not comprised in the inventory, it was held that the property in such after-acquired chattels passed under the bill of sale, for although not specific at the date of the assignment, they subsequently became so by being brought upon and used in connection with the refinery.(a)

After-acquired property.

In another case the grantor, a trader, to secure a loan assigned his premises, together with the good-will and all the goods, wares, merchandise, stock-in-trade, fixtures, furniture, articles, effects and things belonging to him in respect of his business. The bill of sale declared that after-acquired property of the same description should be included in the security, providing that the articles assigned should remain in the grantor's possession until the mortgagee should enter, and secured to the mortgagee a share of the profits of the business in lieu of interest. The grantor sold some of the goods on credit, and the mortgagee took possession, giving notice to the purchasers to pay him the price, but on the grantor going into liquidation it was held that book-debts were not assigned by the deed, and that the unpaid purchase-money was the proceeds of goods allowed to be sold by the grantor for his own profit, and passed to his trustee.(b)

Therefore there must be a clear assignment of chattels to be thereafter acquired, and no intention to include them can be implied from an assignment of chattels in a house, with a power to enter and seize all the goods upon the premises, for such words do not clearly apply to future property.(c)

Thus, what an eminent judge(d) termed a prophetic conveyance, when purporting itself to confer an interest in after-acquired chattels will transfer the property, except by bill of sale to which the amendment Act applies, where on the face of the contract the intention clearly appears to include them, and they are so specific and determined as to be identified, if the contract is one of the class of which Equity will enforce specific performance. The distinction as to what agreements respecting personalty will be enforced in Equity is well illustrated by the remarks of Lord Westbury, C., in Holroyd v. Marshall: "A contract for the sale of goods, as for example, of 500 chests of tea, is not a contract which would be specifically performed, because it does not relate to any chests of tea in particular; but a contract to sell 500 chests of the particular kind of tea which is now in my warehouse at Gloucester, is a contract relating to specific property, which would be decreed to be specifically performed." As a general rule Courts of Equity will

(a) Leatham v. Amor, 26 W. R. 739; 47 L. J. Q. B. 581; 38 L. T. 785.
(b) Browne v. Fryer, 46 L. T. 637, reversing 45 L. T. 521.
(c) Tapfield v. Hillman, 6 M. & G. 245; 12 L. J. C. P. 311; 6 Scott, N. R. 967; 7 Jur. 771; Greenbirt v. Smee, 35 L. T. 168.
(d) Pollock, C.B., in Belding v. Read, 3 H. & C. 955.

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not interfere to enforce specific performance of agreements relating to chattels where compensation in damages would afford a complete and satisfactory remedy.(a)

Where the requisite conditions did not exist, or the assignee's interest under the contract was a mere licence to seize, before the property passed in after-acquired chattels, seizure was still necessary.(b)

A mortgagee of after-acquired property had priority over execution creditors, and was entitled to an injunction restraining them from dealing therewith;(c) but it may be that the equitable estate of the mortgagee under a bill of sale of after-acquired property would have been postponed to that of a purchaser in good faith, for value and without notice, who had taken actual possession of the thing sold; and under the amendment Act a bill of sale of after-acquired property is void except as against the grantor.(d)

A bill of sale of future property required registration, both by the express words of the section, and as conferring a right in equity to personal chattels within sec. 4 of the principal Act.

Application of Act to trade machinery.

5. (1878.) From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof, which would be a bill of sale as to any other personal chattels, shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

(a) See further as to what contracts for the assignment of chattels personal will be decreed to be specifically performed in equity, Story Eq. Jur., ss. 712, 718, *et. seq.*, 12th ed.

(b) Hope *v.* Hayley, 25 L. J. Q. B. 155; Cole *v.* Kernot, 41 L. J. Q. B. 221; Thompson *v.* Cohen, L. R. 7 Q. B. 527; 26 L. T. 693.

(c) Holroyd *v.* Marshall, 10 H. L. Cases, 191.

(d) Secs. 4 and 5 (1882). See Joseph Lyons, & Hallas v Robinson. 15 : 2 A

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a.*) In or incidental to the making any article or part of an article; or

(*b.*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c.*) In or incidental to the adapting for sale any article.

Trade machinery.

By sec. 6 of the amendment Act, a bill of sale of any trade machinery used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse or other place, in substitution for any of the like trade machinery specifically described in the schedule, shall not be void, although such substituted trade machinery is not so specifically described, and was not the property of the grantor at the time of the execution of the bill of sale.

The matters excluded from this definition of trade machinery are thus exempted from the operation of the Acts; but there is much difficulty in deciding what the legislature intended to include or exclude, and it remains for judicial decisions to interpret the ambiguous words of the section. Trade machinery would seem not to be within sec. 7 of the principal Act, nor, if affixed to the freehold, is it within the operation of the order and disposition clause of the

Bankruptcy Act, 1869.[a] Under the Bills of Sale Act, 1854, trade machinery was subject to the same rule as ordinary fixtures, and passed with the land; and it was held that an assignment of trade machinery would pass without special mention such things as were an essential part of the machine, although moveable and actually removed for a particular purpose—as a millstone removed for repair; and if the machine was a fixture, the moveable part of it must also be so held,[b] but chattels which had never been fitted to the machine, though used with it, would not pass.[c] A mortgage of a mill with trade machinery has been held to include machinery affixed in substitution for that of a like description on the premises at the time of the mortgage, but destroyed by fire.[d]

Another statutory definition of factory or workshop is given in the Factory and Workshop Act, 1878 (41 Vic. c. 16, s. 93).

Exception as to certain things.

6. (1882.) Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say),

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

By the section a bill of sale of the chattels mentioned will be valid although they are not described in the schedule, and were not the property of the grantor at the time of the execution of the bill

(*a*) Whitmore *v.* Empson, 26 L. J. Ch. 364; 3 Jur. N. S. 230; 23 Beav. 313; *Exp.* Wilson, *re* Butterworth, 4 D. & C. 143.

(*b*) Mather *v.* Fraser, 2 K. & J. 559; Cort *v.* Sagar, 3 H. & N. 370; 27 L. J. Ex. 378; Liford's Case, 11 Co. 50 b.

(*c*) *Exp.* Astbury, L. R. 4 Ch. 630; 38 L. J. Bank. 9; 17 W. R. 997; 20 L. J. 997.

(*d*) Irish C. S. Building Society *v.* Mahony, 10 Ir. C. L. R. 363.

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of sale; but sub-sec. 2 does not protect any additions to the property specifically described.

Growing crops and fixtures are personal chattels within the Bills of Sale Acts when separately assigned or charged, but fixtures (except trade machinery) are not, when assigned with an interest in any land or building to which they are affixed, nor are growing crops when assigned with any interest in the land on which they grow, [a] and no fixtures or growing crops shall be deemed separately assigned or charged merely because they are assigned by separate words, or that a power of severance is given without otherwise taking possession of the land or building to which they are affixed or on which they grow.[b] Trade machinery, as defined by sec. 5 of the principal Act, is to be deemed personal chattels. Plant includes the tools, apparatus, &c., necessary to carry on any trade or mechanical business.

Certain instruments giving powers of distress to be subject to this Act.

6. (1878.) Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.[1]

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.[2]

(2) Page 70.

Attornments.

(1) The effect of sec. 4 of the amendment Act will add a further difficulty to the use of the attornment clause in mortgages, for the object of such clause has been to enable the mortgagee to seize property not assigned by his security. It seems doubtful whether the clause would not be an infringement of sec. 9 of the amendment

(*a*) Sec. 4, clause 2 (1878).
(*b*) Sec. 7 (1878).

See Hall v. Comfort, 55 L.T.N.S. 550.

Act; but even if permissible, and assuming it to be an agreement necessary for maintaining the security, it can only operate, except as against the grantor, to give a right to seize chattels specifically described in the schedule. As to these it would be useful, giving to the mortgagee the rights of a landlord in the event of the grantor's bankruptcy; but until the validity of the clause under the amendment Act has been decided, it should be very cautiously employed.

Attornments.

Prior to the section, a security over chattels by assignment or demise of a debtor's interest in premises, with a proviso that the premises and chattels should be held by the debtor as tenant from year to year, at a rent which, together with the tenancy, was to cease on payment of all moneys recoverable under the security, a power of entry, without previous demand, being also reserved on default in payment, was held not fraudulent under the statute of Elizabeth, or the Bankruptcy or Bills of Sale Acts; nor was a mortgage, by which the mortgagor attorned tenant to the mortgagee at a fixed rent with a power of distress, a licence to seize within the repealed Act.(a)

An attornment clause in a mortgage deed creates all the incidents and remedies of an ordinary tenancy, and the mortgagee may distrain goods on the mortgaged premises, whether those of the mortgagor or a stranger; thus, where after a mortgage with an attornment clause the mortgagor let to a tenant who assigned, by a bill of sale, certain of his goods on the premises, on the original mortgagee seizing the goods as distress for rent in arrear, under the attornment clause, it was held that the distress was justified, and that the bill of sale holder could not recover damages for the seizure.(b)

It was formerly supposed, and on more than one occasion decided in the County Courts, that an attornment by the mortgagor brought the mortgagee, as landlord, within the protection of sec. 34 of the Bankruptcy Act, 1869.(c) By such an attornment, which was known as the "Bristol Clause," the mortgagee obtained security over all the goods and chattels of the mortgagor on the demised premises without the necessity for registration, thus permitting the mortgagor to remain in apparent possession until bankruptcy, when the mortgagee could distrain for the full amount of his debt to the exclusion of the other creditors.

The test in such cases has now been decided to be whether the intention was to create a real tenancy, or whether the transaction is a mere device for giving an additional security to the mortgagee in the event of the mortgagor's bankruptcy. If the attornment clause

(a) Morton *v.* Woods, 38 L. J. Q. B. 81; L. R. 4 Q. B. 293; 17 W. R. 414.
(b) Kearsley *v.* Phillips, 31 W. R. 909; 52 L. J. Q. B. 581.
(c) Section 42 is the corresponding section of the Bankruptcy Act, 1883.

constitutes a real relation of landlord and tenant between the parties, a distress levied for the rent fixed by the clause will be good as against the trustee in the bankruptcy of the mortgagor, and will thus enable the mortgagee to obtain a security upon chattels of the mortgagor, the proceeds of which would otherwise have been distributed amongst his creditors. But if the rent fixed by the clause be so excessive that the Court comes to the conclusion that it was not intended to create a real rent or a real tenancy, the clause and any distress levied under it, even though before the commencement of the bankruptcy, will be invalid as a fraud on the bankruptcy laws, for sec. 34 of the Bankruptcy Act does not protect a distress levied for a sham rent; thus, where a trader executed a mortgage to secure a current account, attorning tenant to the mortgagee at a rent of £8,000, when the yearly value of the property was £140 only, the Court held that the rent reserved by the attornment clause was so excessive, that it could not have been intended to create a real tenancy, and that the attornment clause was invalid against a trustee under the mortgagor's liquidation.[a] The rent reserved, however, will enure as a security as well for the principal as the interest of the mortgage debt.[b]

Attornments.

An attornment clause in a second mortgage may be valid, notwithstanding there is a like clause in a prior mortgage of the same premises, and if the amount of the rents fixed by the two clauses is a fair rent of the property, so that there is no fraud on the bankruptcy laws, valid distraints may be levied by both mortgagees after the commencement of the bankruptcy.[c]

A mortgage with an attornment clause and an agreement authorising the mortgagee at any time within three months from the date of the mortgage without any previous notice to enter on the premises and determine the tenancy, creates a tenancy from year to year, and not at will, therefore the mortgagee may distrain for the rent reserved, although in the meantime the mortgagor may have become bankrupt; [d] and it is not an objection that the rent is of a fluctuating amount.[e]

It has been decided that a power of distress in an agreement for the hire of chattels is not a fraud on the bankruptcy laws.[f]

(2) These words seem to be introduced to prevent the reservation

(*a*) *Exp.* Jackson, *re* Bowes, 14 Ch. D. 725; 43 L. T. 272; 29 W. R. 253; *Exp.* Williams *re* Thompson, 7 Ch. D. 139; 47 L. J. Bank. 26; 26 W. R. 274; 37 L. T. 764.

(*b*) *Exp.* Harrison, *re* Betts, 18 Ch. D. 127; 30 W. R. 38; 45 L. T. 290; 50 L. J. Ch. 832.

(*c*) *Exp.* Punnett, *re* Kitchin, 16 Ch. D. 226.

(*d*) *Exp.* Queen's Benefit Building Society, *re* Threlfall, 16 Ch. D. 274; 44 L. T. 74; *s. c. sub. nom. Exp.* Blakey, 50 L. J. Ch. 318; 29 W. R. 128.

(*e*) *Exp.* Voisey, *re* Knight, 21 Ch. D. 442; 52 L. J. Ch. 121; 47 L. T. 362.

(*f*) Leman *v.* Yorks. Wagon Co., 50 L. J. Ch. 293.

of a rent to the mortgagee equal to the amount of the loan; and in determining what is a fair and reasonable rent, the test will be, is the rent excessive considering the nature of the property, and does it show of itself that there was no intention to create a real tenancy. (a)

It is important to observe that the benefit of the proviso is limited to cases where the mortgagee, "being in possession," leases to the mortgagor. The better opinion appears to be that such possession must be an actual possession, and as in practice actual possession is seldom taken, the effect of the proviso may be to confine the protection it was intended to afford to a few exceptional cases. It has been held that the possession of a mortgagor, who withholds possession from the mortgagee after the latter has demanded it, is a wrongful possession. (b) Where the mortgage contains an attornment clause, a mortgagee in possession is liable for wilful default in receipt of the rent. (c)

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. (1878.) No fixtures or growing crops shall be deemed under this Act to be separately assigned or charged, by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

(a) *Re* Stockton Iron Works Co., 40 L. T. 29; 10 Ch. D. 335; 27 W. R. 433; 48 L. J. Ch. 417; *Exp.* Auckland Building Society, *re* Raine, W. N. 1879, 28.

(b) Bagnall *v.* Villar, 12 Ch. D. 812.

(c) *Re* Stockton Iron Works, 10 Ch. D. 335.

This section is retrospective only so far as it enacts that a certain rule of construction as to the meaning to be attached to the words "separately assigned or charged," shall apply to bills of sale executed before the commencement of the principal Act.[a]

When fixtures or growing crops are deemed separately assigned.

The section restores a rule recognised in Boyd *v.* Shorrock,[b] but overruled by Hawtrey *v.* Buttlin,[c] Begbie *v.* Fenwick,[d] and *ex parte* Daglish.[e] Under the repealed Act it was held that if the transferee acquired an interest in the fixtures distinct from the land or building, or had power to sever and sell the fixtures separately, the instrument of transfer required registration, and was, if unregistered, invalid so far as it purported to assign chattels.[f]

When, however, a stone merchant, before the commencement of the principal Act, by an unregistered deed, made a mortgage in fee of land, and a stone quarry therein, together with all the fixed and moveable machinery and fixtures of every description, with power for the mortgagee to sell any part or parts of the mortgaged property either together or in parcels, it was held on the mortgagor's bankruptcy, that a steam crane and tramway upon the property in connection with the quarry, comprised in the mortgage deed, and so attached to the freehold as not to be capable of removal without damage, although not fixtures in the ordinary sense, passed to the mortgagee under the deed; and, following Mather *v.* Fraser,[g] that inasmuch as the freehold passed by the deed, registration was not required under the Bills of Sale Acts, 1854.[h]

As an assignment of freeholds or leaseholds will pass trade and tenant's fixtures,[i] and by the section such an assignment is effectual without registration, it will be prudent for a mortgagee of fixtures or growing crops to ascertain whether they are affected by any dealing with the land; and to require a declaration by the grantor that no such charge exists, in addition to the usual covenant against incumbrances.

By sec. 4, cl. 2, of the principal Act, stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving a bill of sale, are excluded from the operation of the Acts.

(*a*) *Exp.* Moore, *re* Armytage, 14 Ch. D. 379; 28 W. R. 924; 42 L. T. 443; 49 L. J. Bank. 60.

(*b*) 37 L. J. Ch. 144; L. R. 5 Eq. 72; 16 W. R. 102; 17 L. T. 197.

(*c*) L. R. 8 Q. B. 290. (*d*) L. R. 8 Ch. 1075.

(*e*) L. R. 8 Ch. 1072; see also *Exp.* Alexander, *re* Eslick, 4 Ch. D. 503; *Exp.* Tweedy, *re* Trethowan, 5 Ch. D. 559.

(*f*) *Exp.* Barclay, *re* Joyce, L. R. 9 Ch. 576.

(*g*) 2 K. & J. 536.

(*h*) Exp. Moore, *re* Armytage, 42 L. T. 443.

(*i*) Meux *v.* Jacobs, L. R. 7 H. L. 481; Climie *v.* Wood, L. R. 4 Exch. 328; 37 L. J. Ex. 158; 18 L. T. 609; Meux *v.* Allen, 22 W. R. 609.

Power to seize in certain events only.

7. (1882.) Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—[1]

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;[2]

(2) Page 74.

[1] As the section does not enact that possession may be taken in the events mentioned, but only declares that the goods shall not be seized for other causes, a power of seizure and sale in the specified events may, it would seem, still be inserted in the deed.

Before this section, permitting seizure only in certain specified events, every condition prior to taking possession must have been fulfilled to make the seizure lawful; and if a demand in writing is precedent to a power of seizure, it must be made according to the terms of the deed, or the seizure will be a mere trespass, for which an action will lie;[a] and if the mortgagee sells recklessly, as he is a trustee for the grantor, and those claiming under him, of any surplus that may remain after the sale of the mortgaged property,[b] he will be responsible in damages.[c]

If the mortgagee takes possession before default he will be subject to an action, for the proviso that the grantor may hold possession operates as a regrant or bailment of the goods; thus, where it was provided that the deed should become void on payment of a certain sum on a certain day, or on some earlier day to be appointed by the grantee by a notice in writing to be served on the grantor twenty-four hours before the day of payment, and the grantee served insufficient notice to pay on a day earlier than that named in the deed, and afterwards entered and sold the goods, it was held that, the notice being bad, he was a mere trespasser, and that the grantor's right to possession of the goods being defeasible only in default on payment, he was entitled to recover the value of his interest in

(*a*) Belding *v.* Read, 3 H. & C. 955, per Channell B.

(*b*) Robinson *v.* Hedger, 17 Sim. 183; 13 Jur. 846; Warner *v.* Jacob, 20 Ch. D. 220; 51 L. J. Ch. 642.

(*c*) Maugham *v.* Sharpe, 17 C. B. N. S. 443.

them at the time of the trespass.(a) An outstanding bill of exchange does not, however, suspend the rights of the grantee.(b)

The measure of damages recoverable for a wrongful seizure is not the actual value of the goods, but the value of the legal interest of the mortgagor in them at the time of seizure.(a)

It would appear that a licence in the terms formerly common in bills of sale, empowering the mortgagee, if necessary, to use force and break into any dwelling-house or premises wherever the goods may be, would be void as a licence to commit an offence against the statute, 5 Ric. II. c. 8.(c)

Power of seizure.

(2) It will be observed that the covenant or agreement in respect of which default in performance will warrant a seizure must be one necessary for maintaining the security.

Under the former Bills of Sale Acts it was held that as a compliance with the stipulations of the deed is required for the grantor's protection, he might, of course, waive them; thus, where a bill of sale contained a proviso for re-entry on non-payment for twenty-four hours after demand, and the mortgagee entered and took actual possession before the expiration of the notice, but the grantor raised no objection to his so doing, the seizure was held good against a trustee under the grantor's liquidation.(d)

If a bill of sale holder chooses to enlarge the time for payment, a default under the terms of the deed will not, it has been said, warrant a seizure,(e) but this has been doubted, and it would seem that a mere promise to enlarge the time, without consideration, will not render illegal a seizure under the terms of the deed unless there has been some misrepresentation of existing facts by the grantee or his agent, on the faith of which the grantor has altered his position for the worse; thus, where a bill of sale given for a loan payable by instalments, authorised the grantee at any time to take possession, and the grantor requested time for payment of one of the instalments, to which the grantee replied that he would wait a week, but nevertheless seized and sold on the third day after the instalment became due, it was held that there had been no waiver of the grantee's rights under the deed, a mere promise, without consideration, being insufficient to prevent him putting them in force.(f)

When the power is to seize and take possession "immediately

(a) Brierley *v.* Kendall, 17 Q. B. 937; 21 L. J. Q. B. 161; Toms *v.* Wilson, 4 B. & S. 442; 32 L. J. Q. B. 382; 11 W. R. 952; 8 L. T. N. S. 778; 10 Jur. N. S. 201.

(b) Bramwell *v.* Eglinton, 5 B & S. 39; 35 L. J. Q. B. 163; 14 W. R. 739; 14 L. T. 735; 12 Jur. N. S. 702; L. R. 1 Q. B. 494.

(c) Edwick *v.* Hawkes, 45 L. T. 168.

(d) *Exp.* Redfern, *re* Ball, 19 W. R. 1058.

(e) Albert *v.* The Grosvenor Investment Co., L. R. 3 Q. B. 129; 37 L. J. Q. B. 24; 8 B & S. 664; Longden *v.* Sheffield Deposit Bank, 24 Sols. J. 913, per Field, J.

(f) Williams *v.* Stern, 42 L. T. 719; 5 Q. B. D. 409; 28 W. R. 901; 49 L. J. Q. B. 663.

after notice," or "immediately upon demand," the grantor has such reasonable time for payment as in the ordinary course of business would suffice to fetch the money, thus, half-an-hour's notice has been held insufficient:[a] and where the bill of sale contained a proviso for redemption if the grantor should instantly on demand, and without delay, on any pretence whatsoever pay the sum due; and it was also provided that the demand might be made personally on the grantor, or by giving or leaving verbal or written notice to or for him at his place of business, &c., so nevertheless that a demand should in fact be made; and in the grantor's absence a demand was made on his son, who stated his inability to meet it, and the grantee immediately seized, it was held that the notice required was such as might be reasonably supposed to reach the grantor and give him an opportunity of complying with it within a reasonable time, and that the seizure was therefore not justified.[b]

Power of seizure.

Where, however, a bill of sale contained a declaration that after default should be made in payment according to the covenants therein contained, or on breach of any covenant of the borrower therein, and after written demand for payment should have been made, or on certain other events, it should be lawful for the mortgagees to seize and sell, and there was the usual proviso for possession until default, it was held that the prior clause was not controlled by the subsequent proviso, and that a seizure on one of the events mentioned was justified independently of default in payment after demand, and although no demand had been made;[c] and prior to the amendment Act, if by the terms of the bill of sale the grantor held the chattels as the mere servant or agent of the mortgagee, or at his will, the latter was entitled to possession whenever he thought fit to call for it, and might at once seize, remove and sell the property.[d]

(2.) If the grantor shall become a bankrupt,[1] or suffer the said goods or any of them to be distrained for rent, rates, or taxes;[2]

(2) Page 76.

[1] By sec. 125, sub-sec. 7, of the Bankruptcy Act, 1869, the word "bankrupt" includes a debtor whose affairs are under liquidation, and the word "bankruptcy" includes liquidation by arrangement. If, therefore, the grantor becomes a liquidating debtor, the section will apply; but his presenting a petition for liquidation, or compounding with his creditors, will not have that effect.

(*a*) Brighty *v.* Norton, 3 B. & S. 305; 9 Jur. N. S. 495; 11 W. R. 167; 7 L. T. N. S. 422; 32 L. J. Q. B. 38; Toms *v.* Wilson, 4 B. & S. 442; but see Wharlton *v.* Kirkwood, 22 W. R. 93; 29 L. T. 645.

(*b*) Massey *v.* Sladen, L. R. 4 Ex. 13; 38 L. J. Ex. 34; *Exp.* Trevor, *re* Burghardt, 1 Ch. D. 297; 45 L. J. Bank. 27; 24 W. R. 301; 33 L. T. 756.

(*c*) *Exp.* National Guardian Assurance Co., *re* Francis, 10 Ch. D. 408; 40 L. T. 237; 27 W. R. 498.

(*d*) Mayhew *v.* Suttle, 4 E. & B. 347; 24 L. J. Q. B. 54; 1 Jur. N. S. 303.

Under the bankruptcy laws, it has been decided that a person becomes bankrupt on committing an act of bankruptcy available for and followed by adjudication; [a] but the commission of an act of bankruptcy without adjudication would not warrant a seizure under the section.

As chattels comprised in a bill of sale given after the commencement of the amendment Act, by way of security for the payment of money, are within the reputed ownership clause of the Bankruptcy Act, 1869, the power of seizure on the grantor becoming bankrupt affords a very inadequate protection to the mortgagee, for if the chattels are in the reputed ownership of the bankrupt at the commencement of the bankruptcy, that is, at the time of the commission of an act of bankruptcy to which the trustee's title relates, the mortgagee's rights may be defeated, although he seizes before adjudication. It may be, however, that actual physical possession taken, though not warranted by the section, would exclude the reputed ownership clause. [b]

[2] Section 13 of the amendment Act, by which chattels are to remain on the premises for five days after seizure, will afford landlords an additional opportunity for distraint; and by sec. 14, a bill of sale to which the amendment Act applies is no protection against distress under a warrant for the recovery of taxes, poor and other parochial rates.

Fraudulent removal.

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

Mere removal will not be sufficient, it must be shown to be with intent to deprive the mortgagee of his remedy; [c] thus, if the effect of the removal would be to deprive the mortgagee of his security, and leave him to his barren remedy by action, it would seem the removal will be within the sub-section; [d] but in all cases it will be a question of fact whether the goods were fraudulently removed; and in a case under the statute 11 Geo. II., c. 19, although the tenant admitted he removed goods to avoid a distress, the question of fraud was left to the jury. [e]

Before the amendment Act, even where no power of seizure on a fraudulent removal was given by the bill of sale, if the grantor dealt fraudulently with the mortgaged goods left in his possession,

(*a*) Fawcett *v.* Fearne, 6 Q. B. 20; 13 L. J. Q. B. 30; 8 Jur. 695; *Exp.* Attwater *re* Turner, 5 Ch. D. 27, 30, per James, L. J.; 25 W. R. 206; 35 L. T. 682; 46 L. J. Bank. 41.

(*b*) *Exp.* Fletcher *re* Henley, 5 Ch. D. 809.

(*c*) Parry *v.* Duncan, 7 Bing. 243; M. & M. 533.

(*d*) Opperman *v.* Smith, 4 D. & Ry. 33.

(*e*) John *v.* Jenkins, 1 Cr. and M. 227.

as if he attempted to sell them, the bailment was determined, and the mortgagee might immediately commence an action for the recovery of the goods or their value,[a] and to restrain their removal, and it would seem that he might have taken possession if he could do so peaceably and without violence.[b]

(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes.

Landlord and grantee.

The effect of secs. 13 and 14 of the amendment Act will be further to imperil the mortgagee's security, for the landlord and tax collector have five days to levy after the mortgagee has seized, an opportunity they will probably not neglect.

Where the grantor did not, upon demand in writing by the grantee, produce a receipt for rent which had only become due a few days, and of which it appeared the landlord had not yet required payment, it was held that the grantor had not failed to produce the receipt without reasonable excuse.[c]

By sec. 14, a bill of sale to which the amendment Act applies is no protection in respect of personal chattels included in such bill of sale, which, but for such bill of sale, would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates. This is a new provision, but whether a bill of sale be registered or not, the chattels it comprises which remain upon the grantor's premises have always, with some few exceptions, been subject to his landlord's distraint for rent. Fixtures and things in actual use or delivered to a person to be dealt with in the way of his trade are absolutely privileged from distress: so also are things in the custody of the law, as of the sheriff or his vendee,[d] but these cannot be removed without satisfying one year's arrears of rent. Beasts of the plough, sheep, the tools of a man's trade, or implements of husbandry, are also privileged from distress, provided there be other sufficient distress upon the premises. The landlord's right of distress may however be waived by consent, and if he expressly or impliedly agrees that chattels placed by a stranger on the tenant's land shall be exempt from distress, he will not be permitted to distrain.[e] The grantee may, however, remove the goods before distress levied; for stat. 11 Geo. II. c. 19, by

(*a*) Fenn *v.* Bittleston, 7 Exch. 152; 21 L. J. Ex. 41.
(*b*) Story on Bailments, 396.
(*c*) *Exp.* Cotton, 11 Q. B. D. 301; *see* also Nunn *v.* Kirkwood, 75 L. T. J. 134.
(*d*) Wharton *v.* Naylor, 12 Q. B. 673; 6 D. & L. 136; 12 Jur. 894; 17 L. J. Q. B. 278.
(*e*) Horsford *v.* Webster, 5 Tyrr. 409; 1 C. M. & R. 696.

which landlords are authorised to follow goods fraudulently or clandestinely removed, and penalties are imposed on persons aiding such removal, does not apply to the goods of strangers or mortgagees.[a] Thus a creditor may, with his debtor's consent, take possession of goods and remove them from the premises for the purpose of satisfying his debt, although he knows the debtor to be in embarrassed circumstances, and apprehended a distress.[b]

Where a bill of sale holder, who had put a man in possession, on being informed by the landlord that rent was in arrear, and that the goods should not be removed until it was paid, continued in possession but made no attempt to remove the goods, but the landlord did not take possession or assume dominion over them, it was held there was no evidence of a conversion by the landlord; and, per Bramwell, B., that an actual prevention of removal by force would not have amounted to a conversion.[c]

Landlord and grantee.

When the landlord distrains and sells the chattels on the premises, part of which are, and part are not, comprised in the bill of sale, a mortgagee is entitled to stand in the landlord's place, and have the goods not comprised in the security first applied in payment of the rent.[d]

When after the expiration of a tenancy for years the holder of a bill of sale of the furniture of the late tenant put and continued a man in possession of the furniture upon the premises, under a power in the bill of sale authorising him to enter upon the premises in or about which the goods should be and to take possession thereof, and if he should think fit to keep possession thereof, and for that purpose to put and continue a man in possession thereof upon such premises, or if he should think fit to sell the goods, whether upon the premises or after moving them, it was held that the landlord was entitled to treat the bill of sale holder as a mere trespasser, and an order was granted restraining him from selling the goods upon the premises or continuing in possession.[e] In another case, the grantor having assigned growing crops, the landlord distrained for rent, and whilst in possession, without notice of the bill of sale, agreed with the grantor, his tenant, to accept a surrender of the tenancy and possession of the crops. He then withdrew the distress, on which the mortgagee seized, but afterwards the landlord, on surrender of the tenancy, entered and took possession of the crops, and in an action by the mortgagee against the landlord it was held that the title of the latter was complete on the surrender, and that

(*a*) Thornton *v.* Adams, 5 M. & S. 38; Fletcher *v.* Marillier, 9 A. & E. 457.
(*b*) Bach *v.* Meats, 5 M. & S. 200.
(*c*) England *v.* Cowley, L. R. 8 Ex. 126; 42 L. J. Ex. 80; 28 L. T. 67.
(*d*) *Exp.* Stephenson, 17 L. J. Bank. 5; De Gex, 586.
(*e*) Smith *v.* Brown, 48 L. J. Ch. 694.

the mortgagee's claim was subject to the rent and the expenses the landlord had incurred in cultivating the crops.[a]

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law: [1]

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a Judge thereof in chambers, and such court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.[2]

[1] This will include a decree, [b] and would seem to include every order of the Court or a Judge, whether in any cause or matter which may be enforced in the same manner as a judgment to the same effect. [c]

[2] It has been decided the Court may restrain the grantee from removing or selling goods seized after the date of the commencement of the Act under a bill of sale executed and registered before such date. [d] The application in the first instance should be by summons, supported by an affidavit of the facts. Having regard to this proviso, a demand for payment should be made, and a reasonable time allowed, before seizure. The object of the proviso appears to be to prevent the extortions too frequently practised on borrowers after default, for which a very complete remedy is afforded. Restraining mortgagee.

Where a bill of sale was payable by instalments, on default in payment of any one of which the whole amount secured was to become due, the mortgagees having seized, Hawkins, J., on the grantor's application, directed them to withdraw on payment of the instalment due and costs; [e] and so where, after seizure, the grantor offered to pay the amount due, which the mortgagee refused to accept, the Court restrained a sale on condition that the amount due was paid.[d]

Subject to the proviso at the end of this section, and in the

(a) Clements *v.* Matthews, W. N. 1883, 86.
(b) Judicature Act, 1873, s. 100.
(c) R. S. C. 1883, xlii. 17, 24.
(d) *Exp.* Cotton, 11 Q. B. D. 301.
(e) *Re* Graves, 27 Sol. J. 215.

Sec. 8. [1878.]

statutory form of bill of sale, the Court will not interfere by injunction to prevent a mortgagee pursuing his legal remedies to get possession of the mortgaged property;(a) nor, unless by some binding rule of law a bill of sale is clearly invalid, will the Court grant relief on an interlocutory motion by the grantor to restrain a mortgagee who has taken possession from continuing such possession, except on the grantor bringing into Court the amount claimed by the mortgagee.(b) This, however, is not an invariable rule, and the Court has a discretion in the matter, and will not order the amount claimed by the mortgagee to be brought into Court if it appears that he is claiming too much.(c) But the Court will not interfere, even by interim injunction, with a mortgagee's legal rights on a mere suggestion that it is possible that a trustee under the grantor's bankruptcy may be able to impeach the security.(d)

On an undertaking, given on obtaining an interim injunction, to pay such damages as the Court shall deem have been sustained by reason of the order, the Court has a discretion, and may refuse to make any order for payment of damages, if those alleged to have been sustained are trivial or remote, or if great delay has occurred in applying for them.(e) Thus, when the receiver under a bankruptcy petition obtained an *ex parte* injunction against the holder of a bill of sale, which was afterwards upheld, but no application for damages was made for three years and a-half, the Court declined to order payment of damages sustained by a distress on the goods while the injunction was in force, holding that the delay was a sufficient answer to the application.(f) Indeed it seems doubtful whether any order for damages will be made where an interlocutory injunction has been wrongly granted, owing to a mistake of law, without any misrepresentation, suppression, or other default by the party obtaining it.(e)

Avoidance of unregistered bills of sale in certain cases.

8. (1878.) Every bill of sale to which this Act applies shall be duly attested, and shall be registered under this Act within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels or any of

(a) Davies *v.* Williams, 7 Jur. 663; Harding *v.* Tingey, 10 Jur. N. S. 872.
(b) Hill *v.* Kirkwood, 28 W. R. 358; 42 L. T. 105.
(c) Hickson *v.* Darlow, 31 W. R. 417.
(d) *Exp.* Bayley, *re* Hart, 43 L. T. 181; 29 W. R. 28; 15 Ch. D. 223.
(e) Smith *v.* Day, 21 Ch. D. 421; 31 W. R. 187.
(f) *Exp.* Hall, *re* Wood, 23 Ch. D. 644.

them are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Application of the section.

This section is repealed by sec. 15 of the amendment Act, but the repeal is, it would seem, qualified by sec. 3, and the section will therefore still govern bills of sales given otherwise than as security for the payment of money,[a] and also all bills of sale registered under the principal Act before the 1st of November, 1882.

By sec. 10, sub-sec. 1, of the principal Act, also repealed by sec. 15 of the amendment Act, every bill of sale to which the principal Act applies shall be attested by a solicitor of the Supreme Court in the prescribed form.

Considerable doubt arose whether under the section registration was not requisite to support a bill of sale between the parties themselves, and the Court of Common Pleas decided that, unless there had been attestation with the formalities prescribed by sec. 10, sub-sec. 1, the instrument would be invalid, even as between the grantor and grantee; but their decision was overruled by the Court of Appeal holding that a bill of sale, though not attested or

(a) Swift v. Pannell, 31 W. R. 513.

registered as required by the Act, was good between the parties;[a] indeed, under the repealed statutes, an unregistered bill of sale was good as between the grantor and grantee, and all other persons except those mentioned in the section: thus, it prevailed against the liquidator of a Company,[b] or the unsecured creditors of a deceased person whose estate was being administered;[c] and this rule was not affected by the provisions of sec. 10 of the Judicature Act, 1875.[d]

When unregistered bills of sale were valid.

Whenever a sale was followed by open delivery and taking of possession, registration, unless to obtain the benefit of the repealed sec. 20, was not essential; for to create a necessity for registration there must have been apparent possession of the goods and a lapse of seven days after the bill of sale was made; nor was the case within the section by reason of apparent possession, the seven days not having expired, for the assignee had the period of seven days within which he might complete his title by registration, and if he took and retained a more than formal possession, he acquired a good title, and no registration was necessary;[e] nor did the bankruptcy of the grantor within the seven days affect the question if the bill of sale was registered in due time;[f] but it was held under the Bills of Sale Act, 1854, that possession taken under an unregistered bill of sale after the time for registration had expired, could not avail against the title of a trustee under a subsequent petition if the grantor had committed a prior act of bankruptcy, though such act of bankruptcy might have been unknown to the grantee at the time of taking possession;[g] but it should be observed that sec. 1 of the Act of 1854 avoided an unregistered bill of sale, in the event of bankruptcy, so far as regarded chattels in the apparent possession of the grantor at or after the time of such bankruptcy, which was decided to mean the commission of an act of bankruptcy to which the title of the trustee related; but the operation of sec. 8 of the principal Act is limited to chattels in the apparent possession of the grantor at or after the time of filing the petition for bankruptcy or liquidation.

It was decided under the Bills of Sale Act, 1854, that the effect of an execution was to avoid a prior unregistered bill of sale

(*a*) Davis *v.* Goodman, 5 C. P. D. 128; 49 L. J. C. P. 344; 28 W. R. 559; 42 L. T. 288; *Exp.* National Mercantile Bank, *re* Haynes, 28 W. R. 848; 43 L. T. 36; 49 L. J. Bank. 62; 15 Ch. D. 42.

(*b*) *Re* Marine Mansions Co., L. R. 4 Eq. 601; 37 L. J. Ch. 115; *re* Stockton Iron Co., 10 Ch. D. 342, *per* Bacon, V.-C.

(*c*) *Re* Knott, 7 Ch. D. 549 n.

(*d*) Tadman *v.* D'Epineuil, 20 Ch. D. 217; 30 W. R. 423; 46 L. T. 409; 51 L. J. Ch. 491.

(*e*) Marples *v.* Hartley, 1 B. & S. 1; 30 L. J. Q. B. 92; Hollingsworth *v.* White, 6 L. T. 604; 10 W. R. 619; Davies *v.* Jones, 7 L. T. N. S. 130; Minister *v.* Price, 1 F. & F. 686; Piercy *v.* Humphreys, 17 L. T. 463.

(*f*) *Exp.* Hahen, *re* Hewer, 21 Ch. D. 871; 46 L. T. 856; 30 W. R. 954; 51 L. J. Ch. 904.

(*g*) *Exp.* Attwater, *re* Turner, 5 Ch. D. 27; 25 W. R. 206; 35 L. T. 682; 46 L. J. Bank. 41.

Sec. 8. [1878.]

Sec. 8. [1882.]

altogether, and to give the holder of a second registered security a good title against the prior grantee and a trustee in the grantor's bankruptcy;[a] but it was doubted if this rule applied under the principal Act,[b] and the result of the section is to avoid the bill of sale only so far as is necessary to give due effect to the execution.[c] Therefore a bill of sale to which the principal Act applies, although void as against an execution creditor for non-compliance with the requirements of the Act, may, after the execution has been satisfied, prevail against subsequent execution creditors, or a trustee in the grantor's bankruptcy, if the goods are no longer in the grantor's apparent possession. Indeed, when after an execution creditor had seized the goods comprised in an unregistered bill of sale, the mortgagee took sufficient possession before the filing of a bankruptcy petition, and the execution was then avoided by relation of the trustee's title to an act of bankruptcy committed before the levy, it was held that the execution creditor was ousted altogether, and the bill of sale holder's title prevailed.[c]

If, however, a security was given up, and the mortgagee proved for his whole debt, a subsequent mortgagee was not advanced, for the security enured for the benefit of the general body of creditors.[d]

As bills of sale to which the amendment Act applies are void altogether if unregistered, and not merely as against a certain class of persons, the refined distinction established by the preceding cases may not be now of so great practical importance.

An unregistered bill of sale was void against an execution creditor, notwithstanding he had notice of the bill of sale at the time he became the grantor's creditor.[e]

Bill of sale to be void unless attested and registered.

8. (1882.) Every bill of sale shall be duly attested,[1] and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof;[2] and shall truly set forth the consideration for which it was given;[3] otherwise such bill of sale shall be

(3) Page 84.

(a) Richards *v.* James, L. R. 2 Q. B. 285; 15 W. R. 580; 36 L. J. Q. B. 116; 8 B. & S. 302; 16 L. T. 674; Edwards *v.* English, 7 E. & B. 564; 26 L. J. Q. B. 193.

(b) *Exp.* Fourdrinier, 31 W. R. 149; 48 L. T. 46; 21 Ch. D. 510.

(c) *Exp.* Blaiberg, *re* Toomer, 23 Ch. D. 254; 52 L. J. Ch. 461; 31 W. R. 906; 49 L. T. 16.

(d) Cracknall *v.* Janson, 26 W. R. 904; 46 L. J. Ch. 652; 37 L. T. 118; *Re* Zucco, *Exp.* Cooper, L. R. 10 Ch. 510; 44 L. J. Bank. 121; 23 W. R. 782; 33 L. T. 3.

(e) Edwards *v.* Edwards, 2 Ch. D. 291.

void in respect of the personal chattels comprised therein.[4]

4) Page 91.

(1) Under the Bills of Sale Acts, 1854 and 1866, attestation was not essential to the validity of a bill of sale; [a] but the formality of attestation by a solicitor was introduced by sec. 10, sub-sec. 1, of the principal Act, now repealed, and every bill of sale to which that Act applied must have been attested in the manner prescribed. By sec. 10 of the amendment Act, the execution of every bill of sale by the grantor shall be attested by one or more credible witnesses, not being a party or parties thereto, and unless so attested will be void.

(2) The true date of execution must appear in the bill of sale.[b]

Time for registration.

By the ordinary rule of computation, when clear days are limited for doing an act, time is to be reckoned exclusively of the first and last days, but as registration is required to be within seven clear days, it must be effected on the seventh day, excluding the day of execution. The words used in the section are the same as those in sec. 10, sub-sec. 2, of the principal Act, under which the rule has been as stated, and it would seem therefore, and by analogy to the practice with regard to warrants of attorney, that registration of a bill of sale executed on the first of the month will be in time if registered on the eighth, unless that day happens to be a Sunday, or other day on which the registrar's office is closed, when registration will be valid if made on the next following day on which the office is open.[c]

The provision for registering bills of sale executed out of England is new, and obviates a difficulty which often arose from the impossibility of registering bills of sale executed abroad within the prescribed time. The requisites of registration are prescribed by sec. 10, sub-sec. 2, of the principal Act, and the cases on the subject will be found collected in the note to that section.

By sec. 14 of the principal Act, any judge of the High Court of Justice, on being satisfied that the omission to register a bill of sale within the prescribed time was accidental or due to inadvertence, may in his discretion extend the time for registration upon such terms as he thinks fit.

The consideration.

(3) A mis-statement of the consideration has always been held a strong, though not conclusive, badge of fraud, [d] but formerly it did not necessarily invalidate a bill of sale as against creditors, if inserted without fraud and with the intention of making the security

(a) Deffel *v.* Miles, 15 L. T. 293.

(b) Dillon *v.* Edwards, 2 Moo. & P. 550.

(c) Sec. 22 [1878]; Williams *v.* Burgess, 12 Ad. & E. 635; 9 Dowl. 544.

(d) *Exp.* Furber, *re* Pellew, 6 Ch. D. 181.

available only to the extent of the sum actually due.[a] Gross inadequacy of consideration is evidence of fraud,[b] although formerly evidence might be adduced to show a valuable consideration.[c]

The consideration.

Under the repealed section of the principal Act the consideration must have been truly stated, and the decisions under that section will therefore still apply. It is difficult to lay down any general rule for adequately setting forth the consideration, and every case must to some extent depend on its particular circumstances; but in cases of difficulty the safest plan is to set out the facts, and not their supposed legal results. It has, however, been decided that the consideration for giving a bill of sale is, if money, the amount actually passing, not necessarily the amount secured by it; thus, where a bill of sale was given for a debt and further advances, but the recitals omitted a sum which had been advanced on a bill of exchange then current, the omission was held not to invalidate the security.[d]

If the consideration is stated in the way in which it would be ordinarily stated between a mortgagor and mortgagee it is sufficient, for the Act does not intend to throw any greater burden on a bill of sale holder than on an ordinary mortgagee. Therefore, substantial accuracy will satisfy the requirements of the Act, and although the bill of sale will be avoided by a material mis-statement, unless, perhaps, a clerical error, a small inaccuracy in the statement of the consideration will not have that effect.[e]

Neither is it necessary to set forth every bargain or stipulation collateral to the consideration,[f] nor need the proposed application of the consideration be stated; thus where a bill of sale recited that the grantor, having two executions on his premises, and being unable to carry on his business by reason thereof, had applied to the assignee to lend him £182 3*s*., to enable him to pay out such executions, which the assignee had agreed to do on having the assignment, and then the deed stated that in pursuance of such agreement, and in consideration of the sum of £182 3*s*. then paid, the grantor assigned certain chattels, and it appeared the assignee, with the grantor's sanction, gave several cheques amounting in the whole to that sum, one being given to the sheriff's officer, another to an execution creditor, another to the grantor, while £25 was

(*a*) Biddulph *v.* Goold, 11 W. R. 882.

(*b*) Strong *v.* Strong, 18 Beav. 408; Matthews *v.* Feaver, 1 Cox, Eq. Cases 278; Doe *v.* James, 16 East, 212.

(*c*) Gale *v.* Williamson, 8 M. & W. 405.

(*d*) *Exp.* Challinor, *re* Rogers, 16 Ch. D. 260; 29 W. R. 204; 44 L. T. 122.

(*e*) *Exp.* Winter, *re* Fothergill, 44 L. T. 323; 29 W. R. 575; *Exp.* National Mercantile Bank, *re* Haynes, 15 Ch. D. 42; *Exp.* Probyn, *re* Barrett, Sols. J., 1880, p. 344.

(*f*) *Exp.* National Mercantile Bank, *re* Haynes, 15 Ch. D. 42.

paid to the grantor's solicitor for money lent and costs, it was held that in the absence of any suggestion of fraud, the consideration, which was the amount of money paid, was sufficiently set forth.[a]

The consideration.

Where a bill of sale recited a debt due to the mortgagee, and that the grantor had agreed to execute the bill of sale in order to induce the mortgagee not to institute proceedings against him, the deed was supported although in fact no proceedings had even been threatened, nor was there any evidence of pressure.[b]

Again, it was held unnecessary to set forth a verbal agreement not to register a bill of sale in consideration of which a larger bonus was given.[c]

But the true nature of the transaction between the parties must always be set forth; thus, where the consideration was an amount stated to have been advanced, but in fact a considerable portion was a mere liability which the mortgagee had arranged with the mortgagor to discharge, the consideration was held not to be truly stated.[d] Also, if money, the consideration for the bill of sale, is advanced at different times, it should be so stated; and where loans amounting to £240 had from time to time, in the months of March and April, been made to a firm consisting of the grantor and other persons, and subsequently, in June and July, other moneys, amounting to £160, had been advanced to the grantor, who had dissolved partnership and taken over the debts and assets of the late firm, the bill of sale reciting that in the month of June last the grantor applied to the mortgagee to lend him the sum of £340, which he consented to do, and then went on to recite a further application and loan of £60, it was held that the consideration not being truly set forth, the registration was void;[e] and it would seem from this case, that if any particulars of the consideration appear on the bill of sale they must be fully and truly set forth. Indeed, as a rule, if the time of payment is mentioned, it must be truly stated. Thus, where a bill of sale stated the consideration to be paid at or before its execution, but in fact only a small portion was then paid, part being handed some days afterwards to other persons at the grantor's request, it was held that the time of payment was not truly stated;[f] and the statement in a bill of sale given to secure a past debt contracted by instalments extending

(*a*) Hamlyn *v.* Betteley, 5 C. P. D. 327; 42 L. T. 373; 49 L. J. C. P. 465; 28 W. R. 956.

(*b*) *Exp.* Winter, *re* Fothergill, 44 L. T. 323.

(*c*) *Exp.* Popplewell, *re* Storey, 21 Ch. D. 73; 47 L. T. 274; 52 L. J. Ch. 39; 31 W. R. 35.

(*d*) Norman *v.* Hodges, C. A. Trinity Sittings, 1883.

(*e*) *Exp.* Carter, *re* Threappleton, 12 Ch. D. 908; 41 L. T. 37; 27 W. R. 943.

(*f*) *Exp.* Rolph, *re* Spindler, 19 Ch. D. 98; 51 L. J. Ch. 88; 30 W. R. 52; 45 L. T. 482.

over two years that the consideration was a sum "now paid" has been held insufficient.(a)

On the other hand, as "payment" does not necessarily mean payment *in præsenti*, a security was supported expressed to be given in consideration of the payment of two sums of money, the first of which had, in fact, been paid some months previously. (b) The consideration.

In another case the facts were, that in January, 1879, the debtor, a nursery gardener, was indebted to his brother in £200, and by a bill of sale, dated the 17th of that month, in consideration of a past debt of £200, and of £50 then advanced, assigned to his brother certain effects. It appeared that of the £50, £5 had been advanced the previous day, so that on the execution of the deed only £45 was actually paid over, but it was held by the Chief Judge that the statement of the consideration was substantially correct. (c)

Where a bill of sale recited that the grantees had agreed to lend the grantor £7,350, and that he was already indebted to them in other sums, that it had been agreed between the parties that the grantor should execute the bill of sale as a security for the repayment of the first-named sum with interest, and witnessed that the bill of sale was executed "in pursuance of the said agreement and in consideration of £7,350 now paid" by the grantees to the grantor, a receipt being indorsed, but in fact no money actually passed between the parties, the sum of £7,350 being the balance due to the grantees in respect of advances made by them to the grantor from time to time, it was held the consideration was sufficiently set forth, inasmuch as the effect of the recitals was to wipe out the old debt and constitute a new lending on the terms of the bill of sale. (d)

So where the grantor who had purchased a brewery from the mortgagee for £2,500, being able to pay £500 only, agreed that the balance of £2,000 should be secured by a bill of sale, and accordingly, immediately after the assignment to him of the brewery, executed a bill of sale expressed to be made in consideration of £2,000 paid by the mortgagee to the grantor "immediately before the execution of these presents," but no money, except the £500, was paid, the £2,000 being the unpaid balance of the purchase-money, it was held that the consideration was properly stated. (e)

In another case the grantor was indebted to the creditors and the bill of sale, after reciting that they had agreed to

(a) *Exp.* Berwick, *re* Young, 29 W. R. 292; 43 L. T. 576; *see*, however, Credit Co. *v.* Pott, 29 W. R. 326.

(b) Carrard *v.* Meek, 29 W. R. 244; 43 L. T. 760; 50 L. J. Ch. 187.

(c) *Exp.* Smith, L. J. N., 1880, p. 39.

(d) Credit Company *v.* Pott, 6 Q. B. D. 295; 50 L. J. Ex 106; 29 W. R. 326; 44 L. T. 506.

(e) *Exp.* Bolland, *re* Roper, 21 Ch. D. 543; 31 W. R. 102; 52 L. J. Ch. 113; 47 L. T. 488.

advance £2,050, witnessed that in consideration of £2,050 the grantor granted to the creditors the chattels comprised in the bill of sale. On the execution of the deed, £2,050 was handed by the creditors to the grantor, who at once handed back £550 to pay off his liabilities to the grantees. In giving judgment, James, L. J., said: "The consideration must be truly set forth; probably it need not be stated with minute accuracy, but it must be set forth substantially. It has been contended that any collateral stipulations as to the application of the consideration ought to be set forth as part of the consideration; that there should be recitals of the intended application of the consideration. I cannot see that recitals of the motive and object of the advance are required by the Act. Collateral matters and stipulations and the motives of the lender are no part of the consideration for the deed, though they may be an inducement or reason for the advance. Suppose instead of there having been bills due by the grantor to the creditors, there had been outstanding in the hands of some other persons bills upon which the creditors were liable, and they had said to the grantor, 'You must take up these bills'? or, suppose a loan were made upon the security of farming stock, and the lender said, 'You must pay the rent which is due to your landlord, or my security will be imperilled?' Stipulations of that kind would be proper enough, and would be part of the bargain as between the parties, but they would be no part of the consideration which is intended by the Act to be set forth. In my view the Act, while requiring the real, the actual consideration to be set forth, does not require that any bargain between the parties relating to it should be stated. Of course if there was a bargain that the whole sum, which is stated to be the consideration, should be at once returned to the grantee, that would be a sham transaction, and the Court would know how to deal with it." (a)

The consideration.

Again, where a bill of sale stated the consideration to be £560 "this day paid by the mortgagee to the mortgagor," but in fact £500 only was paid to the mortgagor, £20 at his request being paid to a valuer who valued the property for the purpose of the loan, and £40 represented costs of the bill of sale and other documents, which the mortgagor requested the mortgagee to include in the bill of sale, the consideration was held to be set forth within the section. (b)

But the doctrine of these cases will not be extended; and a bill of sale was set aside where the consideration was therein stated to be £700, but it appeared that of this £271 had been previously paid by the grantee to discharge a prior bill of sale, and that on a cheque for the balance being handed to the grantor it had, at her request, been cashed, and part of it paid to one of her

(a) *Exp.* National Mercantile Bank, *re* Haynes, 15 Ch. D. 42; 28 W. R. 848.
(b) *Exp.* Challinor, *re* Rogers, 16 Ch. D. 260.

creditors, £21 to a solicitor for preparing the bill of sale, £7 10s. being retained by the grantee for commission on the loan, and expenses in connection therewith, a promissory note for £10 being given for a like purpose, the balance only being received by the grantor. (a) Indeed the cases of *re* Haynes and *ex parte* Challinor are now binding authorities only so far as they decide that if part of the consideration is by the grantor's direction, given at the time of executing the deed, applied in satisfaction of a then existing debt owing by him, the money so paid may be properly stated in the deed to be then paid to him. (b)

The consideration.

The object of setting forth the consideration has been said to be to prevent the giving of a security for a sum stated to be advanced, when in fact a large part of it is retained by the mortgagee; thus, where a bill of sale was expressed to be given in consideration of £120 paid on its execution by the grantees to the grantor, but in fact only £90 was paid, £30 being retained for interest and expenses, and after the usual attestation clause was a receipt for £90, signed by the grantor, stating that the £90, together with the agreed sum of £30 for interest and expenses, making the sum of £120, being the consideration money expressed to be paid, it was held by the Court of Appeal, distinguishing the case from *re* Haynes, that the consideration was not truly set forth, on the ground that there was no debt independently of the transaction of loan, the whole liability for interest and expenses arising out of the transaction on the bill of sale, and that the receipt, coming as it did after the attestation clause, could not form part of the deed. (c)

Again, a bill of sale was expressed to be made in consideration of £50 paid at or before the execution, but only £21 was in fact paid the grantee at the grantor's written request, retaining £3 10s. for expenses, and seven days later paying £25 to the landlord for rent, as the request alleged "now due." No rent was then due, though half the amount paid fell due two days later, but the remainder did not become due for three months, and it was held that the consideration was not truly stated either as to the time or manner of payment, the £25 not being paid to the grantor, but there being only an agreement to pay on his behalf, and further, it not being paid at or before the execution of the deed. (d) So also the deed was avoided where, out of the advance stated to be

(a) Hamilton v. Chaine, 7 Q. B. D. 319; 29 W. R. 676; 44 L. T. 764; 50 L. J. Q. B. 456.

(b) *Exp.* Firth *re* Cowburn, 19 Ch. D. 419; 51 L. J. Ch. 473; 30 W. R. 529; 46 L. T. 120.

(c) *Exp.* Charing Cross Bank, *re* Parker, 16 Ch. D. 35 50 L. J. Ch. 157; 44 L. T. 113; 29 W. R. 204.

(d) *Exp.* Rolph, *re* Spindler, 19 Ch. D. 98.

paid on the giving of a bill of sale, was deducted the amount due on a previous bill of sale and a small sum for stamps.[a]

The consideration.

It may therefore now be considered settled law that if the amount of the expenses incident to the preparation of a bill of sale, given by way of mortgage, is deducted from the sum stated in it as the consideration, and only the balance is actually paid by the lender to the borrower, the consideration is not stated so as to satisfy the Act; for the expenses of the preparation of a bill of sale do not become part of the debt due to the mortgagee until after its execution; thus the retainer of 30s. for expenses from the amount stated to be paid was held to vitiate the deed.[b]

Where, however, the recitals show the true transaction, it seems that stating expenses as part of the advance will not avoid the deed; thus where it was recited that the grantor had applied to the mortgagees to advance the sum of £70 less £16 agreed interest and expenses, witnessing, that in consideration of £54, being the said sum of £70 less the said sum of £16 deducted and retained therefrom, and being the agreed interest and expenses in consideration of which the loan was granted, and which said sums of £54 and £16 conjointly (thereinafter called the loan) were by the mortgagees paid to the grantor at or before the execution thereof, the receipt of which said sums the grantor acknowledged, the bill of sale was upheld, although only £54 was in fact paid.[c]

Some further guide to a statement of the consideration may be found in the following cases, decided under the repealed Annuity Act, 1777, 17 Geo. III. c. 26, which, by sec. 3, provided that in every annuity deed the consideration should be fully and truly set forth and described. Under this statute it was held unnecessary to set out a mere nominal consideration, as 10*s.* to a trustee, it being like the reservation of a peppercorn rent, and in fact seldom paid;[d] and when an annuity deed was granted by three persons, one of whom was known to be merely a surety, it was held that if all were present when the money was paid, and signed the receipt, the consideration was properly stated as a payment to all.[e] On the other hand, when the consideration was stated as £600 paid, but the real consideration was the payment of £300, and the giving up of a former annuity, it was held insufficient, the objection being not that the consideration was not a good one, but that it was untruly stated;[f] and where the deed stated the

(*a*) *Exp.* Bernstein, *re* Gordon, 74 L. T. J. 245.
(*b*) *Exp.* Firth, *re* Cowburn, 19 Ch. D. 419.
(*c*) Collis *v.* Tuson, 46 L. T. 387.
(*d*) Ince *v.* Everard, 5 T. R. 545; Few *v.* Backhouse, 8 A. & E. 789.
(*e*) Cook *v.* Jones, 15 East, 237.
(*f*) Washburn *v.* Birch, 5 T. R. 472, per Lord Kenyon.

consideration as £160 paid by plaintiff to defendant, but it appeared that £99 14*s.* 6*d.* of the money had been previously advanced, for which the defendant had given his note, and that on the execution of the deed only so much was advanced as to complete the £160, allowing £12 12*s.* for expenses, the note being given up, it was held that the consideration was not sufficiently set forth.[a]

How a bill of sale may become invalid.

(4) This provision is entirely new, and while under previous statutes an unregistered bill of sale was void only as against a certain class of persons, registration not being essential as between grantor and grantee,[b] by the section a bill of sale to which the amendment Act applies, if not duly registered, would seem to be absolutely void in respect of the personal chattels comprised therein, even as against the grantor. Indeed it would appear that the object the legislature had in view was not merely the protection of creditors, but to ensure that whenever the property in chattels is changed as security for a debt, it should be changed in a particular manner.[c]

The section is not retrospective, and bills of sale given before the commencement of the amendment Act are still valid as between grantor and grantee, although the registration turns out to have been defective.[d]

It will be observed that bills of sale are declared void only in respect of the chattels comprised, and therefore covenants contained in them for the payment of money will still be valid.

It may be convenient here to consider in what way a bill of sale will now be avoided. It may be invalid for non-compliance with the Bills of Sale Acts, under the statute of Elizabeth[e] or under the bankruptcy laws. By the amendment Act a bill of sale is declared altogether void in the following cases:—If not duly attested and registered, or if it does not truly set forth the consideration;[f] if not in accordance with the form in the schedule to the Act;[g] or if made or given in consideration of any sum under £30.[h]

However, a bill of sale, if otherwise regular, will not be invalid for non-registration during the seven days allowed, for the bill of sale holder has the period of seven days within which to complete his title by registration; thus, if goods are seized under an execution, or if the grantor becomes bankrupt within seven days after the making of such a bill of sale, the section would not apply, although the form of registering the bill of sale has been gone through, but in a

(*a*) Kirkman *v.* Price, 1 H. Bl. 309.
(*b*) Davis *v.* Goodman, 5 C. P. D. 128.
(*c*) *See* Hughes *v.* Morris, 2 De G. M. & G. 355.
(*d*) Swire *v.* Cookson, 48 L. T. 877.
(*e*) 13 Eliz. c. 5.
(*f*) Sec. 8 (1882). (*g*) Sec. 9 (1882). (*h*) Sec. 12 (1882)

defective manner.[a] If, however, within the seven days the grantor, being a trader, becomes a bankrupt, or a liquidating debtor, while the goods are in his reputed ownership, with the mortgagee's consent they will pass to the trustee; although the contrary was decided before the repeal of sec. 20 of the principal Act.[b] After the lapse of seven days, unless time is extended under sec. 14 of the principal Act, registration can confer no security; nor will seizure cure a defect in registration, the question of apparent possession being now immaterial.

How a bill of sale may become invalid.

Further, a bill of sale will now have effect only in respect of the personal chattels specifically described in the schedule, and will be void, except as against the grantor, in respect of any chattels not so specifically described;[c] or in respect of chattels specifically described in the schedule, of which the grantor was not the true owner at the time of its execution;[d] but nothing contained in ss. 4 and 5 of the amendment Act will render a bill of sale void in respect of any of the things excepted by sec. 6 of that Act.

A bill of sale to which the amendment Act applies will be no protection in respect of personal chattels included therein, which, but for such bill of sale, would have been liable to distress under a warrant for the recovery of taxes, poor and other parochial rates.[e]

By the principal Act, a bill of sale is declared absolutely void when executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale comprising the same chattels as security for the same debt, so far as respects chattels comprised in the prior bill of sale, unless the subsequent bill of sale was given in good faith for the purpose of correcting some material error in the prior deed, and not for the purpose of avoiding the Act.[f]

Also registration is declared void of a bill of sale given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, unless written on the same paper or parchment therewith before registration, and truly set forth in the filed copy.[g] Further, the registration of a bill of sale must be renewed once at least every five years, or the registration will become void.[h]

Although a bill of sale complies with all the provisions of the Bills of Sale Acts, it may be impeached as fraudulent against

(*a*) Banbury *v.* White, 32 L. J. Ex. 258; 2 H. & C. 300; 11 W. R. 785; 9 Jur. N. S. 913; 8 L. T. 508; Smale *v.* Burr, L. R. 8 C. P. 64; 42 L. J. C. P. 70; 1 W. R. 193; 27 L. T. 555; Brignall *v.* Cohen, 21 W. R. 25.

(*b*) *Exp.* Kahen, *re* Hewer, 30 W. R. 955.

(*c*) Sec. 4 (1882). (*d*) Sec. 5 (1882).

(*e*) Sec. 14 (1882). (*f*) Sec. 9 (1878).

(*g*) Sec. 10, sub.-sec. 3 (1878).

(*h*) Sec. 11 (1878).

creditors, either under the statute of Elizabeth (13 Eliz. c. 5), or the bankruptcy laws.

What bills of sale are deemed fraudulent.

The statute of Elizabeth enacts that every gift or grant of chattels, made for any intent to delay, hinder, or defraud creditors or others of their just remedies, and every suit, or judgment and execution made with a like intent, shall, as against the person so delayed or defrauded, be utterly void, frustrate and of none effect. By sec. 6, there is exempted from the operation of the statute any alienation lawfully made for good, which here means valuable, consideration and *bonâ fide*, to any person not having at the time of such alienation notice of the fraud.

The statute does not apply as between the grantor and grantee, or privies or consenting parties,[a] or as between strangers other than *bonâ fide* creditors;[b] and therefore a conveyance, fraudulent under the statute of Elizabeth, is good against the person making it; and if before avoidance the transferee assigns to a purchaser for value, the transaction will be protected;[c] for an assignment which by statute is void against certain persons, may be perfectly good between the parties from the time of its operation until it is avoided, so as to pass the property in the chattels assigned.[d] When once avoided, it is taken as if it had never existed.[e]

A past debt is a sufficient consideration within this statute; and when coupled with a present substantial advance, may rebut a presumption of an intent to delay creditors;[f] and a *bona fide* assignment by way of mortgage of the whole of the assignor's property, present and future, to one person as security for a past debt is not void within the statute of Elizabeth,[g] although such an assignment would be invalid in the event of the assignor's bankruptcy.

To invalidate an assignment made for valuable consideration, it is necessary to show an actual intent to defeat or delay creditors within the purchaser's knowledge, and this intent is to be inferred from the circumstances of the case. If the deed is in such a form as to defeat creditors, and was executed and taken with that intention, it will be invalid, though full consideration was given for it;[h] thus, where a trader whose goods had been seized under a *fi. fa.* executed a bill of sale of them to the defendant, who paid out the sheriff, and the jury found that the object of the transaction was

(*a*) Olliver *v.* King, 25 L. J. Ch. 427; White *v.* Morris, 11 C. B. 1015.
(*b*) Robinson *v.* M'Donnell, 2 B. & Ald. 134; Bessey *v.* Windham, 6 Q. B. 166; L. J. Q. B. 7.
(*c*) Morewood *v.* S. Yorkshire Railway, 3 H. & N. 798; 28 L. J. Ex. 114.
(*d*) R. *v.* Creese, 2 C. C. R. 105.
(*e*) Hue *v.* French, 26 L. J. Ch. 317.
(*f*) Martindale *v.* Booth, 3 B. & Ad. 498; Riches *v.* Evans, 9 C. & P. 640.
(*g*) *Exp.* Games, *re* Bamford, 12 Ch. D. 314; 27 W. R. 744; 40 L. T., 789.
(*h*) Hale *v.* Metropolitan Saloon Omnibus Co., 28 L. J. Ch. 777; Bott *v.* Smith, 21 Beav. 511.

to protect the goods from other creditors, the bill of sale was set aside.[a]

As, irrespective of the bankruptcy laws, a debtor may lawfully prefer one of his creditors to the others,[b] and before the seizure of his property under an execution can convey a valid title to any person without notice of delivery of the writ to the sheriff,[c] a bill of sale if otherwise *bonâ fide*, and for valuable consideration, will not be invalid merely because its effect is to delay a particular creditor, or to defeat an expected execution,[d] nor will such an effect invalidate a deed executed for the benefit of one or more creditors, unless the transaction is merely a cloak for retaining a benefit to the grantor, or made for the mere purpose of defeating creditors.[e] Thus, where a creditor, having taken in execution the goods of a debtor who had confessed judgment, bought them by public auction, taking a bill of sale from the sheriff for valuable consideration, and afterwards let them to the former owner at a rent which was actually paid, he was held to have a title which could not be impugned as fraudulent by other creditors having executions against the same debtor.[f]

Voluntary conveyances.

Where, however, the conveyance is not founded on valuable consideration, proof of an actual intent to defraud or delay creditors is unnecessary, and if the natural result of the assignment would be to defeat or delay creditors, an intent to do so will be presumed; for instance, if after deducting the property which is the subject of the voluntary settlement, sufficient available assets are not left for payment of the assignor's debts, then the law infers an intent to defeat creditors; or if the person making the settlement was not in a position actually to pay his creditors, or was about to embark in undertakings which might result in liabilities, the law will infer that he intended, by making the voluntary settlement, to defeat and delay them.[g] Another test suggested is that there must be unpaid debts which were existing at the time of the assignment, or the assignor must have been so largely involved at the time, or have contracted debts which would shortly fall due, as to induce the Court to believe that his intention was to defeat or delay his creditors.[h] A deed

(*a*) Graham *v.* Furber, 14 C. B. 410; 2 C. & P. 452; 18 Jur. 226; 23 L. J. C. P. 51; Reed *v.* Blades, 5 Taunt. 212; Latimer *v.* Batson, 4 B. & C. 652.

(*b*) Benton *v.* Thornhill, 7 Taunt. 149; Riches *v.* Evans, 9 C. & P. 640.

(*c*) 19 & 20 Vic. c. 97, s. 1.

(*d*) Wood *v.* Dixie, 7 Q. B. 802; 9 Jur. 796; Pickstock *v.* Lyster, 3 M. & S. 371; Darvill *v.* Terry, 6 H. & N. 807; 30 L. J. Ex. 335; Westbury *v.* Clapp, 12 W. R. 511; Gladstone *v.* Padwick, L. R. 6 Ex. 203.

(*e*) Alton *v.* Harrison, L. R. 4 Ch. 623.

(*f*) Watkins *v.* Birch, 4 Taunt. 284.

(*g*) Freeman *v.* Pope, L. R. 5 Ch. 540; 39 L. J. Ch. 689; 23 L. T. 208; *Exp.* Russell, *re* Butterworth, 19 Ch. D. 588; 46 L. T. 113; 30 W. R. 584; 51 L. J. Ch. 621.

(*h*) Spirett *v.* Willows, 3 De G. J. & S. 293; Mackay *v.* Douglas, L. R. 14 Eq. 106; 41 L. J. Ch. 539; Holmes *v.* Penney, 26 L. J. Ch. 179; 3 K. & J. 90 5 W. R. 132; 28 L. T. 156; 3 Jur. N. S. 80.

executed with intent to defraud future, but not present creditors, has been supported;[a] but this does not seem to be in accordance with the authorities. A voluntary alienation, made with the intention of defeating an execution, is void against creditors by the words of the statute.

An assignment of chattels, together with leaseholds, may be deemed voluntary within the statute of Elizabeth, although the assignee takes the burden of the covenants.[b]

What bills of sale are deemed fraudulent.

In Twyne's Case[c] certain resolutions were come to as to what should be the signs or marks of fraud; but the tendency of modern decisions is to decide every case on a consideration of all the circumstances. If, however, the deed being absolute, the grantor continues in possession until an execution or bankruptcy, a strong[d] though not conclusive presumption arises of fraud, and a secret trust for the grantor's benefit;[e] but on a conditional bill of sale, continuance in possession, when consistent with the deed, is not even *primâ facie* evidence of fraud,[f] unless such possession is a contrivance to defeat creditors.[g] As secrecy is a badge of fraud, so notoriety raises a presumption of *bonâ fides*.[h]

To prove a bill of sale fraudulent, declarations made by the grantor at the time of executing it are admissible, but not those made at another time,[i] but the will of a deceased person, though not proved, has been admitted as a declaration to show the *bonâ fides* of a bill of sale.[j] So also a solicitor employed to obtain the execution of a deed, and who is one of the attesting witnesses, is not precluded on the ground of a breach of professional confidence from giving evidence as to what passed at the time of execution by which the deed may be proved invalid,[k] but as the grantor is liable to a prosecution, upon the statute 13 Eliz. c. 5, if party or privy to a fraudulent conveyance, he is not bound to answer questions as to the true object of the transaction.[l]

A bill of sale, though valid under the statute of Elizabeth, may

(*a*) Smith *v.* Tatton, 6 L. R. Ir. 32.

(*b*) Ridler *v.* Ridler, 22 Ch. D. 74; 31 W. R. 93; 48 L. T. 396; 52 L. J. Ch. 343; *Exp.* Hillman, 40 L. T. 178; 10 Ch. D. 622; distinguishing Price *v.* Jenkins, 46 L. J. Ch. 805; 5 Ch. D. 619; *Exp.* Doble, 26 W. R. 407; 38 L. T. 183.

(*c*) 3 Rep.; 1 Sm. L. Cases.

(*d*) *Exp.* Wilson, 29 L. T. 860; 22 W. R. 241.

(*e*) Edwards *v.* Harben, 2 T. R. 587; Reed *v.* Blades, 5 Taunt. 212; Paget *v.* Purchard, 1 Esp., 205; Latimer *v.* Batson, 4 B. & C. 652.

(*f*) Pennell *v.* Dawson, 18 C. B. 355; Martindale *v.* Booth, 3 B. & Ad. 498; Hale *v.* Metropolitan Saloon Omnibus Co., 28 L. J. Ch. 777; Reed *v.* Wilmot, 7 Bing. 577.

(*g*) Nunn *v.* Wilsmore, 8 T. R. 521.

(*h*) Latimer *v.* Batson, 4 B. & C. 652.

(*i*) Phillips *v.* Eamer, 1 Esp. 357; Coole *v.* Braham, 3 Exch. 183; 18 L. J. Ex. 105.

(*j*) O'Sullivan *v.* Burke, 9 Ir. C. L. Rep. 105.

(*k*) Crawcour *v.* Salter, 18 Ch. D. 30; 45 L. T. 62; 30 W. R. 21; 51 L. J. Ch. 495.

(*l*) 3 Co., 80 b.; Michael *v.* Gray, 1 F. & F. 409.

be avoided as an act of bankruptcy, but an assignment which is fraudulent within the statute of Elizabeth is also void as against the policy of the bankruptcy laws.

What bills of sale are void under the bankruptcy laws.

Under the Bankruptcy Act, 1869,[a] an assignment by a debtor of the whole of his property, or of the whole with a merely nominal exception, or an exception of property which would not pass to a trustee in bankruptcy,[b] or it seems of property not readily available[c] in consideration of a pre-existing debt, is fraudulent and an act of bankruptcy.[d]

An assignment of this nature is fraudulent as against creditors, for the debtor's estate gains nothing by the transaction, but where there is some substantial equivalent the case is different. A sale for value,[e] therefore, or a mortgage made in good faith to secure an advance or an existing debt, with a binding agreement for a substantial further advance which is subsequently made, to enable the debtor to meet his engagements or carry on his business, will be good against his trustee;[f] but in order that the execution of a bill of sale of substantially all the grantor's property as security for a pre-existing debt and further advances may not be an act of bankruptcy, it is necessary that there should be an agreement to make further advances, and it is not sufficient that further advances should have been in the contemplation of the parties, the deed being stamped so as to cover them, and they having been actually made after the execution of the deed.[g] It is not, however, necessary that the agreement to make further advances should be legally binding, and a promise may be sufficient, if it appears that the arrangement was made in good faith, and was not a scheme to secure payment of the existing debt.[h]

The test in all such cases is, not whether the further advance

(*a*) 32 & 33 Vic. c. 71, sec. 6, sub-sec. 1:—"That the debtor has in England or elsewhere made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally"—(*Exp.* Lückes *re* Wood, L. R. 7 Ch. 302; 26 L. T. 113; 41 L. J. Bank. 21). Sub-s. 2:—"That the debtor has in England or elsewhere made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof." The Bankruptcy Act, 1883 (46 & 47 Vic. c. 52), sec. 4 (1, *a*, *b*), is in substance the same. Clause (*e*) declares a fraudulent preference an act of bankruptcy.

(*b*) *Exp.* Hawker, *re* Keeley, L. R. 7 Ch. 214; 41 L. J. Bank. 34; 20 W. R. 322; 26 L. T. 54.

(*c*) *Exp.* Russell, *re* Butterworth, 19 Ch. D. 588.

(*d*) Worsley *v.* De Mattos, 1 Burr. 467; Lindon *v.* Sharp, 6 M. & G. 895; 2 Scott, N. R. 730; 13 L. J. C. P. 67; Smith *v.* Cannan, 2 E. & B. 35; 17 Jur. 911; 72 L. J. Q. B. 291.

(*e*) *Exp.* Bolland, *re* Price, 41 L. J. Bank. 60; 20 W. R. 862; Rose *v.* Haycock, 1 A. & E. 460; 3 N. & M. 645.

(*f*) Pennell *v.* Reynolds, 11 C. B. N. S. 709; 5 L. T. 286; Lomax *v.* Buxton, L. R. 6 C. P. 107; 40 L. J. C. P. 150; 24 L. T. 137; 19 W. R., 78; Hutton *v.* Cruttwell, 1 E. & B. 15; 17 Jur. 392; 22 L. J. Q. B. 78.

(*g*) *Exp.* Dann, *re* Parker, 17 Ch. D. 26; 29 W. R. 771; 44 L. T. 760; 51 L. J. Ch. 290.

(*h*) *Exp.* Wilkinson, *re* Berry, 22 Ch. D. 788; 48 L. T. 495; 31 W. R. 649; 52 L. J. Ch. 657.

was large or small, but, whether real or sham, it was made for the purpose of obtaining security for a pre-existing debt.(a)

What bills of sale are void under the bankruptcy laws.

Neither will the assignment be invalid, although for a past debt arising from a previous loan, if made in pursuance of an absolute agreement entered into at the time of the loan.(b) But, if the giving of the bill of sale is purposely postponed until the debtor is in a state of insolvency, in order to prevent the destruction of his credit which would result from registering the deed, such a transaction will not be protected, for the postponement is evidence of an intention to commit an actual fraud on the general body of the creditors;(c) and in all cases the person setting up such a prior agreement must prove its existence and bonâ fides, and the reason for any delay in carrying it out. Thus, where a debtor shortly before his bankruptcy executed a bill of sale of substantially all his property, in pursuance of a previous agreement, for valuable consideration, to execute a further security, "if required," and the request to execute the bill of sale was not made until several writs were out against the debtor, the bill of sale was held void against the trustee in the debtor's subsequent bankruptcy.(d)

As has been observed, if at the time of giving the bill of sale, or if founded on a previous agreement, at the time such agreement was made, the debtor receives an equivalent which may have the effect of enabling him to meet his engagements or continue business, the assignment will be protected.(e) That equivalent need not be in money. If the debtor has something done for him to enable him to carry on his business, *e.g.*, where a drawer of bills took them up at the acceptor's request,(f) or where a creditor consented to take the debtor's acceptance at seven days for a balance of account,(g) or released goods stopped in transitu,(h) or supplied goods on credit,(i) it will be sufficient to prevent the assignment operating as an act of bankruptcy. Forbearance, however, will not constitute such an equivalent as to protect a transfer for a past debt, where the creditor's proceedings would result in an act of bankruptcy; and

(a) *Exp.* Greener, *re* Vane, 46 L. J. Bank. 76; 36 L. T. 781; *Exp.* Ellis, 2 Ch. D. 797; 45 L. J. Bank. 159; 34 L. T. 705.

(b) Harris *v.* Rickett, 28 L. J. Ex. 197; Mercer *v.* Peterson, L. R. 3 Ex. 104; *Exp.* Izard, *re* Cook, L. R. 9 Ch. 271; 43 L. J. Bank. 31; 22 W. R. 342; 30 L. T. 7; *Exp.* Winter, *re* Softley, 24 W. R. 68; 20 Eq. 746; 44 L. J. Bank. 107; 33 L. T. 62.

(c) *Exp.* King, 2 Ch. D. 256; *Exp.* Fisher, *re* Ash, L. R. 7 Ch. 636; 41 L. J. Bank. 62; 26 L. T. 931; 20 W. R. 849; *Exp.* Burton, *re* Tunstall, 13 Ch. D. 102; 28 W. R. 268; 41 L. T. 571.

(d) *Exp.* Kilner, *re* Barker, 41 L. T. 520; 13 Ch. D. 245; 28 W. R. 269.

(e) Heath *v.* Cochrane, 37 L. T. 280; 46 L. J. Q. B. 727; Bittlestone *v.* Cooke, 6 E. & B. 296; 25 L. J. Q. B. 281; 2 Jur. N. S. 758.

(f) *Exp.* Reed, *re* Tweddell, L. R. 14 Eq. 586; 20 W. R. 622; 26 L. T. 558.

(g) Philps *v.* Hornstedt, L. R. 1 Ex. D. 62.

(h) *Exp.* Threlfall, *re* Williamson, 46 L. J. Bank. 8; 35 L.T. 675; 25 W. R. 127.

(i) *Exp.* Sheen, *re* Winstanley, 1 Ch. D. 560; 45 L. J. Bank, 89; 24 W. R. 685; 34 L. T. 48.

where a trader executed a bill of sale of all his property to secure an existing debt, for which judgment had been obtained, and the creditor, in consideration of an undertaking to give the bill of sale upon demand, had forborne to levy execution, it was held that as the execution if levied would have constituted an act of bankruptcy, and rendered the debtor's property divisible amongst his creditors, the forbearance was no equivalent, and that the bill of sale was void against the debtor's trustee, the Lords Justices observing, that if such a transaction could be supported it would render nugatory sec. 87 of the Bankruptcy Act, 1869.(a) Neither will forbearance to seize under a bill of sale of the whole of the grantor's property, given for value, be a sufficient equivalent as against the trustee in bankruptcy of the grantor, for the giving of a new bill of sale in lieu of the first, and the new bill of sale given under such circumstances, without any fresh advance to the grantor, is an act of bankruptcy.(b)

What bills of sale are void under the bankruptcy laws.

A bill of sale, if legally fraudulent as an act of bankruptcy, cannot be supported on the ground that it was given in substitution for a former bill of sale for which there had been an equivalent,(c) nor is the previous bill of sale admissible, even to prove *bonâ fides*, unless duly stamped.(d)

Where the transfer is of part only of the debtor's property, the question would appear to be whether insolvency, or in case of a trader, stoppage of business, is a necessary consequence of putting the instrument into force,(e) but the validity of such a transaction will in a great measure depend upon all the circumstances of the case and the proportion of the property assigned to the debtor's whole estate.(f) The mere existence of a past consideration in this instance is not evidence of fraud, for every one must have power to make over some part of his property, but if the transaction has for its object a fraud on creditors, it is an act of bankruptcy.(g)

Fraudulent preference.

Further, by section 92 of the Bankruptcy Act, 1869, every con-

(a) *Exp.* Cooper, *re* Baum; 10 Ch. D. 313; and compare Woodhouse *v.* Murray, L. R. 4 Q. B. 27; 9 B. & S. 720; 38 L. J. Q. B. 28; 17 W. R. 206; 19 L. T. 570; and Philps *v.* Hornstedt, 1 Ex. D. 62.

(b) *Exp.* Payne, *re* Cross, 11 Ch. D. 539; *Exp.* Stevens, 20 Eq. 786; 44 L. J. Bank, 136; 23 W. R. 908; 33 L. T. 135.

(c) *Exp.* Foxley, *re* Nurse, L. R. 3 Ch. 515; 16 W. R. 831; 18 L. T. 862.

(d) Williams *v.* Gerry, 10 M. & W. 296.

(e) Hale *v.* Allnutt, 18 C. B. 505; 25 L. J. C. P. 267; *Exp.* Wensley, 1 De G. J. & S. 273; 32 L. J. Bank, 23; 11 W. R. 241; 7 L. T. 548; 9 Jur. N. S. 315; Young *v.* Fletcher, 3 H. & C. 732; 34 L. J. Ex. 154; 13 W. R. 722; 12 L. T. 392; 11 Jur. N. S. 449.

(f) *Exp.* Evans, *re* Edwards, 39 L. T. 364; *Exp.* Burton, *re* Tunstall, 13 Ch. D. 102; *Exp.* Field, *re* Marlow, 28 W. R. 267.

(g) Siebert *v.* Spooner, 1 M. & W. 714; 2 Gale, 135; *Exp.* Pearson, L. R. 8 Ch. 667; 21 W. R. 688; 28 L. T. 796; 42 L. J. Bank. 44; Edwards *v.* Glyn, 28 L. J. Q. B. 350; 2 E. & E. 29.

veyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due, from his own moneys, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same, [a] be deemed fraudulent and void, as against the trustee of the bankrupt; but the section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration. The Bankruptcy Act, 1883, sec. 48, re-enacts this section, substituting "is adjudged" for "shall become" bankrupt, and omitting the last clause; providing (sub-sec. 2) that the section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Fraudulent preference.

It has been said that a fraudulent preference is not an act of bankruptcy under the Bankruptcy Act, 1869; [b] but this would seem doubtful, [c] and all doubts are now set at rest as from the 31st December, 1883, the Bankruptcy Act, 1883, sec. 4, sub-sec. 1, c., declaring a fraudulent preference to be an act of bankruptcy.

In determining whether giving a bill of sale constitutes a fraudulent preference, the words of sec. 92 raise three questions: First, was the grantor unable, from his own moneys, to pay his debts as they became due; secondly, did he give the bill of sale with a view to prefer the creditor; and lastly, is the creditor protected by the proviso of the section? It will be observed that transactions in favour of creditors are alone affected by the section. [d]

In order that a payment or transfer should be void as a fraudulent preference, it is sufficient that preferring the creditor should have been the substantial, effectual, or dominant view with which the payment or transfer was made, and it is not necessary that it should have been the sole view. [e] This view to prefer may be rebutted by circumstances, and although regard should be had rather to the words of the section than to decisions before the Act, [f] it is still law that, to bring the case within the section,

(a) See note (1) p. 76.

(b) *Exp.* Stubbins, *re* Wilkinson, 17 Ch. D. 58; 50 L. J. Ch. 547; 29 W. R. 653 44 L. T. 877.

(c) Pulling *v.* Tucker, 4 B. & Ald. 382; *Exp.* Halliday, L. R. 8 Ch. 283; 21 W. R. 348; 28 L. T. 324.

(d) *Exp.* Kelly, 11 Ch. D. 306; 48 L. J. Bank. 65; 40 L. T. 404; *Exp.* Stubbins, 17 Ch. D. 58.

(e) *Exp.* Hill, *re* Bird, 23 Ch. D. 695.

(f) *Exp.* Griffith, *re* Wilcoxon, 23 Ch. D. 69; 48 L. T. 450; 52 L. J. Ch. 717.

the transfer must be voluntary, and with a view to prefer; therefore, if made in pursuance of a previous binding contract,(a) or in the ordinary course of business,(b) or in consequence of apprehended civil or criminal proceedings,(c) or to avoid a distress,(d) or if in consequence of a demand or pressure by the creditor,(e) without collusion,(f) the transfer will not constitute a fraudulent preference. But a threat of proceedings against a man who, to the knowledge of the creditor, is about to become bankrupt, as it can have no real influence upon him, will not protect the transaction.(g)

Where, by virtue of a bill of sale, chattels become the property of the mortgagees, and are not in the reputed ownership of the grantor at the commencement of his bankruptcy, it is immaterial whether the transaction by which the mortgagees obtain the actual possession of such chattels would, if there had been no bill of sale, amount to a fraudulent preference.(h)

Although a bill of sale is given in favour of a creditor by a person unable to pay his debts, and who becomes bankrupt within the prescribed time, the transaction may be protected by the last clause of sec. 92, and secs. 94 and 95 of the Bankruptcy Act, 1869, if the creditor can prove that he took the bill of sale for value and in good faith, that is without any knowledge that he was being preferred;(i) but the burden of proving this rests upon him.(j) As has been noticed, the Bankruptcy Act, 1883, abolishes this protection.

Protected transactions.

Sections 94 and 95 of the Bankruptcy Act, 1869, provide that nothing in the Act contained shall render invalid any contract or dealing with any bankrupt, made in good faith and for valuable consideration, before the date of the order of adjudication by a person not having, at the time of making such contract or dealing, notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication, or any disposition or contract with respect to the disposition of property by con-

(a) Bills *v.* Smith, 34 L. J. Q. B. 68; 13 W. R. 407; 12 L. T. 22; 11 Jur. N. S. 154; *Exp.* Mackenzie *re* Bent, 42 L. J. Bank. 25; 28 L. T. 486; *Exp.* Blackburn, L. R. 12 Eq. 358; 40 L. J. Bank, 79; 19 W. R. 973; 25 L. T. 76.

(b) Butcher *v.* Stead, L. R. 7 H. L. 839; 44 L. J. Bank. 129; 33 L. T. 541; 24 W. R. 462.

(c) De Tastet *v.* Carroll, 1 Stark. 88; Thompson *v.* Freeman, 1 T. R. 155.

(d) Mavor *v.* Croome, 1 Bing. 261.

(e) *Exp.* Tempest, *re* Craven, 40 L. J. Bank. 22; 23 L. T. 650; L. R. 6 Ch. 70; *Exp.* Topham, L. R. 8 Ch. 614; 42 L. J. Bank 57; 21 W. R. 655; 28 L. T. 716; Jones *v.* Harber, L. R. 6 Q. B. 77; 40 L. J. Q. B. 59; 19 W. R. 248; Smith *v.* Pilgrim, 2 Ch. D. 127; 34 L. T. 408.

(f) *Exp.* Arnold, *re* Wright, 3 Ch. D. 70; 35 L. T. 21; 24 W. R. 977; 45 L. J. Bank. 130, per James L. J.; *Exp.* Reader, 20 Eq. 763; 32 L. T. 36; 44 L. J. Bank. 139; *Exp.* Bolland, *re* Gibson, 8 Ch. D. 230; 26 W. R. 481; 38 L. T. 326.

(g) *Exp.* Hall, *re* Cooper, 19 Ch. D. 580; 51 L. J. Ch. 556; 46 L. J. 549.

(h) *Exp.* Symmons, *re* Jordan, 28 W. R. 803; 14 Ch. D. 693; 42 L. T. 106.

(i) Butcher *v.* Stead, L. R. 7 H. L. 839; *Exp.* Kevan *re* Crawford, L. R. 9 Ch. 752; Tomkins *v.* Saffery, 3 App. Cases, 213, 226; 26 W. R. 62; 37 L. T. 758.

(j) *Exp.* Tate, 25 W. R. 52; 35 L. T. 531.

veyance, transfer, charge, delivery of goods, payment of money, or otherwise howsoever, made by any bankrupt in good faith, and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.(a)

Where a person relies on the protection of these sections, the burden of proof is on him to prove absence of notice of an act of bankruptcy.(b)

Effect of bankruptcy on bills of sale.

Under the Bankruptcy Act, 1869, an act of bankruptcy available for adjudication must occur within six months next before the presentation of the petition on which the adjudication was made,(c) but by sec. 11, the trustee's title relates, in certain events, to any prior act of bankruptcy committed within twelve months next preceding adjudication; and a deed executed before that period is therefore not impeachable as an act of bankruptcy.(d) By the Bankruptcy Act, 1883, this relation is by sec. 43 limited to the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition: and by sec. 6, sub-sec. 1 (c), the act of bankruptcy on which the petition is grounded must have occurred within three months before its presentation.

A creditor may, however, bring an action to set aside a deed under the statute of Elizabeth at any time within the period allowed by the statutes of limitation for recovering his debt.(e)

An existing adjudication is conclusive against the holder of a bill of sale executed by the bankrupt, that the act of bankruptcy on which the adjudication was professedly founded was in fact committed, but a third party whose title to property is affected by the adjudication may appeal from it.(f)

A trustee cannot, however, avoid a bill of sale, except where by the statutes he takes a higher title than the bankrupt; thus, where a debtor wrote his creditor informing him he had forged his name to a bill of exchange, and entreating him to take up the bill

(a) These sections are in substance re-enacted by the Bankruptcy Act, 1883; sec. 49.

(b) *Exp.* Cartwright, *re* Joy, 44 L. T. 883; *exp.* Schulte, *re* Matanlè, L. R. 9 Ch. 409; 30 L. T. 478; 22 W. R. 462.

(c) *Exp.* Gilbey, *re* Bedell, 8 Ch. D. 248; 47 L. J. Bank. 49; 26 W. R. 708; see also B. A., 1883, sec. 168.

(d) Allen *v.* Bonnett, L. R. 5 Ch. 577; 23 L. T. 437; 18 W. R. 871.

(e) *Re* Maddever, 31 W. R. 720; 52 L. J. Ch. 733.

(f) *Exp.* Learoyd, *re* Foulds, 10 Ch. D. 3; 39 L. T. 525; 48 L. J. Bank 17 27 W. R. 277.

to save the debtor from prosecution and ruin, offering, if he would do so, to give him a bill of sale to secure the amount of an existing debt and the further advance, upon which the creditor paid the bill, taking a bill of sale, and seizing and selling the goods; on the debtor being adjudicated bankrupt, it was held that, though the transaction might have been illegal, yet, as the creditor had obtained possession, both parties being *in pari delicto*, the debtor, if he had remained solvent, could not have rescinded the contract, and there being no offence against the bankrupt laws his trustee stood in no better position.(a)

Jurisdiction of Court of Bankruptcy.

Nor could a trustee in bankruptcy, under the Bankruptcy Act, 1869, resort to the Court of Bankruptcy in all cases where he seeks to set aside a bill of sale; as he takes only the bankrupt's title except when the statute places him in a better position. When he takes only that which the bankrupt himself would have taken, the matter should be left to the ordinary tribunals; but when by the operation of the bankrupt laws the trustee claims by a higher and better title than the bankrupt, the case should be dealt with by the Court of Bankruptcy; as when it is sought to set aside the transaction on the ground of the relation of the trustee's title, or of fraudulent preference(b) or, it would seem of fraud under the statute of Elizabeth; (c) but if he seeks to set aside the deed on a ground which would have been available to the bankrupt, *e.g.*, actual fraud, or the like, he should take proceedings by action.(d) In such cases the Court has a judicial discretion to be exercised with regard to all the circumstances; thus, where questions of character are involved, and a large amount is at stake, the matter should be directed to be tried in the High Court.(e)

If, however, a stranger to the bankruptcy is willing to submit to the jurisdiction of the Court of Bankruptcy, the trustee should not object,(f) and any objection to jurisdiction must be taken at the earliest moment.(g)

If a trustee applies to the Court of Bankruptcy to set aside a bill of sale of goods, which have been sold by the grantee, and for

(a) *Exp.* Caldecott, *re* Mapleback, 4 Ch. D. 150; 46 L. J. Bank. 14; 35 L. T. 503; 25 W. R. 103; 13 Cox C. C. 374.

(b) *Exp.* Brown, *re* Yates, 11 Ch. D. 148; 40 L. T. 402; 27 W. R. 651; 48 L. J. Bank. 78.

(c) *Exp.* Butters *re* Harrison, 14 Ch. D. 265; 43 L. T. 2; 28 W. R. 876, per James, L. J.; *Exp.* Price, *re* Roberts, 21 Ch. D. 557; 51 L. J. Ch. 131; *per* Brett, L. J.

(d) *Exp.* Dickin, *re* Pollard, 8 Ch. D. 377; 26 W. R. 731; 38 L. T. 860; 48 L. J. Bank. 36; *Exp.* Musgrave, *re* Wood, 10 Ch. D. 94; 48 L. J. Bank 39; 27 W. R. 372; 39 L. T. 647; *Exp.* Lyons, L. R. 7 Ch. 494; 41 L. J. Ch. 41; 20 W. R. 566; 26 L. T. 491.

(e) *Exp.* Armitage, *re* Learoyd, 17 Ch. D. 13; 44 L. T. 262; 29 W. R. 772; *Exp.* Price, *re* Roberts, 21 Ch. D. 553; B. A. 1883, s. 102.

(f) *Exp.* Fletcher, *re* Hart, 9 Ch. D. 381; 39 L. T. 187; 26 W. R. 843.

(g) *Exp.* Swinbanks, *re* Shanks, 11 Ch. D. 525; 48 L. J. Bank. 120; 27 W. R. 898; 40 L. T. 825.

payment over of the proceeds, he cannot afterwards sue for the difference between the sale price and the true value of the goods, for he elects to waive the tort. In such cases he should claim the value of the goods and damages,[a] but the Court of Bankruptcy cannot award damages for acts committed prior to the commencement of the trustee's title.[b]

Proof by mortgagee

The holder of a valid registered bill of sale may, in the event of the grantor's bankruptcy, elect to rest on his security, compelling the trustee to redeem him, or he may realise it by sale, or apply to the Court to have it realised under the direction of the Court, proving and receiving dividend for any deficiency.[c] He also has a right to prove for his whole debt, on giving notice to the trustee of his intention to do so, and giving up his security;[d] but if he seeks to prove before realising his security, he must state in his proof the particulars and value at which he assesses the same, and will be deemed a creditor only in respect of the balance due to him after deducting such assessed value.[e] He will be bound to pay over to the trustee the amount which his security may produce beyond the assessed value, and the trustee will be entitled at any time before realisation of the security by the creditor to redeem the same upon payment of such assessed value; but if the security realises a less sum than the value at which it was assessed, the creditor's proof will not be increased.[f]

Where the chattels comprised in an unregistered bill of sale had been transferred by joint tenants, one of whom assigned his interest to the other, who became bankrupt, the latter's moiety only was held to pass to the trustee.[g]

When the holder of an unregistered bill of sale which was declared void had paid out executions which were good against the grantor's trustee, he was held entitled to be repaid out of the proceeds of the goods the amounts so paid;[h] and an unregistered bill of sale holder who has paid off prior incumbrances, which would have ranked against the estate, has been held entitled to be recouped on his security being set aside against the trustee under the grantor's liquidation;[i] but such a payment must be made in

(*a*) Smith *v.* Baker, L. R. 8 C P. 350; 42 L. J. C. P. 155; 28 L. T. 637.

(*b*) *Exp.* Eatough, *re* Cliffe, 28 W. R. 433; 42 L. T. 95.

(*c*) Bankruptcy Act, 1869, sec. 12; G. R. 1870, Rules 78, 80; B. A., 1883, sec. 9 (2), Sched. ii. 9.

(*d*) B. A. 1869, sec. 40; Rule 136; B. A., 1883, Sched. ii. 10.

(*e*) G. R. 1870, Rule 99; B. A., 1883, Sched. ii. 11.

(*f*) G. R. 1870, Rules 100, 101. These Rules are considerably altered by the B. A., 1883, Sched. ii. 12–15.

(*g*) *Exp.* Brown, *re* Reed, 39 L. T. 338; 9 Ch. D. 389; 27 W. R. 219; 48 L. Bank. 10.

(*h*) *Exp.* Mutton, *re* Cole, 41 L. J. Bank. 57; 14 Eq. 178.

(*i*) *Exp.* Harris, *re* James, 44 L. J. Bank. 31; 19 Eq. 253; 31 L. L. T. 21.

Sec. 9. [1878.] good faith, and if for the purpose of securing the property for the debtor's benefit, will not be protected.[a]

Possession of receiver.

A receiver who has not perfected his title by giving the security required by the order appointing him, will not be protected in his possession of the goods,[b] but interference with a duly appointed receiver, although the mortgagee may have seized prior to the receiver's appointment, is a contempt of Court; and so will be a removal of the goods comprised in a valid bill of sale where a receiver is in possession, and if a question as to its validity is pending between the mortgagee and the receiver under the grantor's bankruptcy, the mortgagee should apply to the Court for leave to exercise his legal rights.[c]

Although a bill of sale is not void under the statute of Elizabeth, or as an act of bankruptcy, the chattels it comprises will, when the grantor is a trader, remain in his order and disposition, if something has not been done by the creditor to avoid the operation of sec. 15, sub-sec. 5, of the Bankruptcy Act, 1869.[d]

Avoidance of certain successive bills of sale.

9. (1878.) Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognisance of the case, that the subsequent bill of sale was bonâ fide given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

The section does not invalidate a subsequent bill of sale executed more than seven days after the execution of a prior unregistered

(*a*) *Exp.* Hall, *re* Townsend, 14 Ch. D. 132.

(*b*) Edwards *v.* Edwards. 2 Ch. D. 291.

(*c*) *Exp.* Andrews, *re* Fells, 4 Ch. D. 509; 36 L. T. 38; 46 L. J. Bank. 23; 25 W R. 382; *Exp.* Cochrane, *re* Mead, 20 Eq. 282; 44 L. J. Bank. 87; 23 W. R. 726 32 L. T. 508.

(*d*) See note to sec. 20 (1878).

Sec. 9. [1878.]

Sec. 9. [1882.]

bill of sale of the same chattels.(a) A clerical error will not invalidate a bill of sale.(b)

Under the repealed Acts, it was attempted to avoid the necessity for registration by an agreement between the grantor and grantee, made at the time of giving the bill of sale, to give and accept successive bills of sale, the last only to be registered; and such an arrangement was good against execution creditors,(c) although void against a trustee in bankruptcy,(d) unless founded on a new consideration.(e)

The giving of each successive bill of sale in substitution was held to annul and cancel the deed that stood earlier in the series;(e) but it would seem that the mere cancellation of a bill of sale does not revest any property in the goods in the mortgagor if the cancellation is with the view of obtaining a better security, unless there is an intention to release.(f)

Form of bill of sale.

9. (1882.) A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

This is a new provision, which will probably give rise to some litigation.

It would seem that inventories of goods with receipt attached, receipts, powers of attorney, licences to seize and agreements conferring a right in equity to personal chattels, which are declared bills of sale by sec. 4 of the principal Act, will no longer be available as securities, for they cannot fulfil the conditions prescribed by this section.

The object of the section has been said to be twofold—first, that the borrower should understand the nature of the security; secondly, that a creditor on merely searching the register should be able to understand the borrower's position, without having to get legal assistance as to the meaning of the security. The legislature intended that the loan of money on the security of a bill of sale should be a simple transaction, and that a bill of sale should be void against all the world, even as against the grantor, if it does not comply with the provisions of the section. Every bill of sale must be substantially like the form in the schedule; nothing

(a) Carrard *v.* Meek, 29 W. R. 244; Wilson *v.* Watherspoon, 71 L. T. J. 230.

(b) Elliott *v.* Freeman, 7 L. T. N. S. 715; Hollingsworth *v.* White, 10 W. R. 619; Lamb *v.* Bruce, 45 L. J. Q. B. 538; 24 W. R. 645.

(c) Ramsden *v.* Lupton, L. R. 9 Q. B. 17; Smale *v.* Burr, L. R. 8 C. P. 64.

(d) *Exp.* Cohen, *re* Sparke, L. R. 7 Ch. 20; *Exp.* Stevens, 44 L. J. Bank. 136; Stansfield *v.* Cubitt, 27 L. J. Ch. 266; 4 Jur. N. S. 80; 2 D. & J. 222; *Exp.* Furber, *re* Pellew, 6 Ch. D. 181.

(e) *Exp.* Hall, *re* Jackson, 46 L. J. Bank. 39; 25 W. R. 382; 35 L. T. 947; 4 Ch. D. 682; *Exp.* Harris, *re* Pulling, 42 L. J. Bank. 9; 21 W. R. 44; 27 L. T. 501; L. R. 8 Ch. 48.

(f) Gummer *v.* Adams, 13 L. J. Ex. 40.

Hall v. Comfort, 55 L.T.N.S. 550; 18 2.B.D. 11.
Exp. Hubbard, 17 2.B.D. 690.
Goldstrom v. Fallerman, 18 2.B.D. 1.

substantial must be subtracted from it, and nothing actually inconsistent must be added.[a] The consideration should be carefully stated, and as has been noticed,[b] is not necessarily the money secured: but whatever may be the consideration, a fixed sum must be stated as the amount secured, which, with rateable interest, calculated up to the time when the principal shall be called in, can be recovered by the grantee. There must be no attempt to alter the sum secured, and nothing must be added to it except by way of rateable interest. The interest may be such as is agreed upon, and may be payable by instalments, but must be rateable, otherwise there will be a variance from the form.[a]

Form of bill of sale.

It is therefore very doubtful whether a bonus, as such, can now lawfully be reserved by a bill of sale, and capitalised interest certainly cannot; and care must be taken that the deed does not by its form contravene any of the provisions of the Act; thus the following bill of sale was held void:—The deed assigned chattels specified in the schedule by way of security for £300, money advanced, and the capitalised interest thereon, being at the rate of 60 per cent. per annum; the grantor agreeing to pay £480, being the principal and capitalised interest, by certain instalments at dates named, also to deliver to the mortgagee the receipts for rent, rates, and taxes when demanded in writing or otherwise, and not to make any assignment for the benefit of creditors, or file a petition for liquidation or composition. There were other covenants of a stringent character, and a proviso that if the grantor should break any of the covenants, all moneys secured should immediately become payable, concluding with the proviso against seizure, as in the statutory form. It was held, and affirmed by the Court of Appeal, that the clause making the whole principal and capitalised interest payable upon a breach of covenant was not in accordance with the form, and that as the covenants on a breach of which payment was to be made were not limited to the events specified in sec. 7, the clause in effect gave the mortgagee power to seize for causes other than those warranted by the Act.[c]

In the course of the judgment, Brett, M. R., said—"If upon failure to pay the first instalment the whole of the interest which the grantee, on performance of the contract, is ultimately to receive becomes immediately payable, the bill of sale would, I think, be contrary to the form in the schedule, for interest is payable upon money only so long as it is due, and it is contrary to the nature of interest to make it payable before it is due because a condition has not been performed or a certain event has happened." The Court

(*a*) Davis *v.* Burton, 11 Q. B. D. 537; 52 L. J. Q. B. 636, *per* Brett, M.R.

(*b*) Page 85.

(*c*) Davis *v.* Burton, 11 Q. B. D. 537; affirming 10 . B. D. 414; 31 W. R. 523; 48 L. T. 433.

also decided the bill of sale to be void as enabling the grantee to seize the goods upon failure to comply with a verbal demand for receipts for rent, rates and taxes, which stipulation was impliedly forbidden by sec. 7, sub-sec. 4, Fry, L. J., observing: "It is said that this is a covenant necessary for maintaining the security, but a covenant cannot be valid if it is prohibited by the legislature; and this covenant alters that relation between the parties which the law intended to allow."(a)

These observations throw some doubt upon a decision of Chitty, J., where a bill of sale was given to secure £100, "and £76 being the interest agreed to be paid for the said advance," the mortgagors agreeing to pay the principal and agreed interest by quarterly instalments, the mortgagees, in the events specified in sec. 7, being authorised to take possession and pay themselves the principal and interest secured, or so much thereof as should be unpaid. It was held that the bill of sale was substantially in accordance with the statutory form, and that it is unnecessary to state the rate of interest in so many words when the instrument shows what the utmost amount of interest could be.(b)

It has been held that a bill of sale omitting the proviso from the statutory form is void under this section. (c)

Agreements for payment, insurance and otherwise, for maintaining the security, should be inserted, but it is safer to adhere to the statutory form as closely as possible. As the amendment Act does not in terms confer any power of seizure, it would seem that this may be included in the deed, together with a power of sale, in the events specified in sec. 7 of the Act; and also the usual proviso for redemption or for annulling the deed on payment. Objections to the form of bills of sale with these clauses have on several occasions been overruled by the Judge in chambers.

Various modifications of the statutory form of bill of sale will be found in Appendix A, Part III.

Attestation.

10. (1882.) The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the

(a) Davis *v.* Burton, 11 Q. B. D. 537; affirming 10 Q. B. D. 414; 31 W. R. 523 48 L. T. 433.

(b) Wilson *v.* Kirkwood, 48 L. T. 821.

(c) *Re* Prideaux, *per* Hawkins, J. (MS. note).

Sec. 10. [1878.] execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Attestation.

Before the Bills of Sale Act, 1878, attestation was not necessary,[a] but by sec. 8 of the amendment Act a bill of sale is void unless duly attested. The repealed first sub-section of sec. 10 of the Bills of Sale Act, 1878, introduced the formality of attestation by a solicitor, and required him to state in the attestation clause that he had explained the bill of sale to the grantor. In practice the presence of a solicitor was some guarantee to the genuine character of the transaction, and the object of the legislature in abolishing such a sanction is not very clear, nor can the substitution of a credible witness be deemed altogether satisfactory. The words "credible witness" in the 5th section of the Statute of Frauds were held to mean such persons as were not disqualified by mental imbecility, interest, or crime, from giving testimony in a Court of justice; and as incompetency from crime or interest is abolished by 6 & 7 Vic. c. 85, it would appear that all persons of sane mind are credible witnesses. If, on the other hand, the literal meaning of the words is adopted, considerable confusion must arise, for it is undoubtedly the province of the tribunal having cognisance of the cause, to determine whether the witnesses are credible from their demeanour and other circumstances.

Before the provision in the section, it had been decided that a party to a bill of sale could not be an attesting witness.[b]

It would seem that the effect of the section, with sec. 8 of the amendment Act, will render it necessary to call the attesting witness to prove an unregistered bill of sale for any purpose where the fact of execution is in issue;[c] but the execution of registered bills of sale may, under sec. 16 of the principal Act, be proved by an office copy of the bill of sale and affidavit of an attesting witness.

The repeal of sub-sec. 1 of sec. 10 of the principal Act would seem limited to bills of sale to which the amendment Act applies.[d] Bills of sale given otherwise than by way of security for the payment of money, should still therefore be attested with the formalities prescribed by the principal Act.

Mode of registering and attesting bills of sale.

10. (1878.) A bill of sale shall be attested and registered under this Act in the following manner:

(1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court,

(a) Deffell *v.* Miles, 15 L. T. N. S. 293.
(b) Seal *v.* Claridge, 7 Q. B. D. 516.
(c) See note to sec. 16 [1878].
(d) Swift *v.* Pannell, 31 W. R. 543.

and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor.[a]

Attestation.

This sub-section is repealed by sec. 10 of the amendment Act, but the repeal would seem to be qualified by sec. 3;[b] and bills of sale given otherwise than to secure the payment of money appear still to require attestation in the prescribed manner. As to this class of bills of sale, the sub-section is to be read as included in and incorporated with sec. 8 of the principal Act, therefore, unless the prescribed form of attestation is followed, such bills of sale will be invalid against the persons named in the latter section, but valid as between the grantor and grantee.[c] It is, however, only required that the attestation clause should state that the effect of the deed has been explained; thus, that the grantor has been fully informed of the nature and effect of the bill of sale, was held sufficient,[d] and it is not necessary by the section that the explanation should in fact have been given; indeed, if such explanation was necessary, sec. 8 of the principal Act does not make the bill of sale void against any one by reason of the omission; but it would seem that a solicitor attesting that he had given an explanation, where in fact he had not done so, would be liable to be struck off the rolls.[e]

The provisions as to the attestation and explanation of bills of sale by a solicitor were inserted not merely for the grantor's benefit but for the protection of creditors, as a guarantee of the genuine character of the transaction and as a security against fraud.[f]

Before the amendment introduced by this sub-section the law interfered to protect a person who had by misplaced confidence been induced to sign a document by which he was injuriously affected; thus, where a mortgagor, a man in humble circumstances and without legal advice, conveyed the mortgaged property to his solicitor, it was held that the deed was invalid unless all the circumstances had been explained to the mortgagor, and that the onus of proving this rested on the solicitor.[g] And where a money lender advertised loans on

(a) The following is suggested as a form of attestation:—
Signed, sealed and delivered by the said grantor, A. B., in my presence; the effect of the above written bill of sale having been explained to the said grantor before his execution thereof, by me, the attesting solicitor,
C. D., *(Address)*.,
A Solicitor of the Supreme Court of Judicature.

(b) Swift *v.* Pannell, 31 W. R. 543.

(c) Davis *v.* Goodman, 49 L. J. C. P. 344.

(d) Corkhill *v.* Lambert, lxx. L. T. J. 46.

(e) *Exp.* National Mercantile Bank, *re* Haynes, 28 W. R. 848; Hill *v.* Kirkwood, 28 W. R. 358.

(f) Davis *v.* Goodman, 49 L. J. C. P. 344.

(g) Prees *v.* Coke, L. R. 6 Ch. 645.

easy terms, at five per cent., but charged more than cent. per cent. in the bill of sale, the borrower's denial of any knowledge of an increase in the rate of interest was said to throw on the bill of sale holder the onus of showing that he had clearly explained to the borrower the terms on which the loan was made.[a]

It would seem immaterial that the attestation is by an uncertificated solicitor,[b] and a bill of sale was held sufficiently attested within the meaning of the sub-section, although the attesting solicitor did not practise on his own account and was managing clerk of the solicitors who acted generally for the grantee.[c] Indeed the Act does not seem to require the presence of an independent solicitor, thus the solicitor for the grantee, who had prepared the bill of sale, may attest it.[d] It was, however, held by the Court of Appeal, affirming the decision of Huddleston, B., that a party to the deed could not attest it, and therefore attestation of a bill of sale by the grantee, although a solicitor, was invalid.[e] The principle of this decision has been adopted in sec. 10 of the amendment Act, which provides that a party to the bill of sale shall not be an attesting witness.

Registration of bill of sale.

(2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation,[1] and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale,[2] shall be presented to and the said copy and affidavit shall be filed with the registrar

(2) Page 112.

(a) Moorhouse *v.* Woolfe, 46 L. T. 374; *c. f.* Helsham *v.* Barnett, 21 W. R. 309.
(b) Holgate *v.* Slight, 21 L. J. Q. B. 74; 2 L. M. & P. 662.
(c) Hill *v.* Kirkwood, 28 W. R. 358.
(d) Penwarden *v.* Roberts, 30 W. R. 427; 46 L. T. 161; 51 L. J. Q. B. 312 9 Q. B. D. 137.
(e) Seal *v.* Claridge, 7 Q. B. D. 516.

within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed: (3)

(3) Page 119.

Requisites of copy bill of sale and affidavit.

(1) A mere clerical error in the copy will not invalidate registration;(a) thus the mis-spelling of a name, (b) or the omission of a few words from the filed copy, where it is clear from the context that no one could be misled,(c) will not vitiate the bill of sale. It is sufficient to state that the bill of sale was given on the date of execution, although the consideration money was not then paid. The true date of execution must be given, but an error in date will not be material if it is one which is obviously a mistake and can be corrected from the affidavit itself; and the requirements of the section will be complied with if the affidavit states that the bill of sale was executed on the day it bears date.(d)

The affidavit which should comply with the provisions of the rules(e) must be filed at the same time as the bill of sale,(f) and state the due execution and attestation of the bill of sale in the prescribed manner, but it is not an objection that the deponent speaks only to his belief. (g)

Affidavit of attestation.

Questions have arisen under sub-sec. 1 of this section as to the sufficiency of the affidavit of due attestation under the principal Act, and it has been held that it must state from the knowledge of the person who made the oath, that the bill of sale was executed by the grantor in the presence of the solicitor attesting its execution, nor is it sufficient to verify his signature to the attestation clause; thus, an affidavit was held insufficient in which the deponent stated that he was present and saw the grantor execute the bill of sale, the effect thereof having been first explained to him by the solicitor, whose handwriting he verified, as it did not swear that the solicitor was present when the bill of sale was executed.(h) And so was a similar affidavit, which stated in addition that the deponent was one of the attesting witnesses, and that the name of the solicitor set and subscribed

(a) Sec. 14 (1878), Note.

(b) Gardnor *v.* Shaw, 19 W. R. 753.

(c) *Exp.* Kahen, *re* Hewer, 46 L. T. 856.

(d) Darvill *v.* Terry, 6 H. & N. 807; Taylor *v.* Bentley, 8 B. & S. 190; Buckeridge *v.* Flight, 6 B. & C. 53.

(e) See notes to sec. 17 (1878).

(f) Grindell *v.* Brendon, 6 C. B. N. S. 698; 28 L. J. C. P. 333; 7 W. R. 579.

(g) Roe *v.* Bradshaw, L. R. 1 Ex. 106; 35 L. J. Ex. 71; 14 W. R. 284; 14 L. T. 641.

(h) Ford *v.* Kettle, 9 Q. B. D. 139; 30 W. R. 741; 46 L. T. 667; 51 L. J. Q. B. 553; Sharpe *v.* Birch, 8 Q. B. D. 111; 51 L. J. Q. B. 64; 45 L. T. 760; 30 W. R. 428.

as the other witness attesting the execution was in his handwriting.(a)

It was not, however, necessary in so many words to state that the solicitor attested, and it was sufficient if this could be inferred from the whole affidavit.(b)

In one of the first cases under the principal Act, it was held sufficient to depose to an attestation clause stating that the bill of sale had been explained to the grantor without repeating the statement in the affidavit;(c) and subsequently it was decided that the affidavit need not state that any explanation had been given.(d)

An affidavit of execution by the attesting solicitor under the principal Act was not invalid because sworn before his partner;(e) but now no affidavit is sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or any agent or correspondent of such solicitor; and any affidavit which would be insufficient if sworn before the solicitor himself, will be insufficient if sworn before his clerk or partner.(f)

Description of grantor.

(2) The affidavit must contain such a description of the residence and occupation of the grantor at the time of registering the bill of sale,(g) that creditors and others interested may know that the person giving the bill of sale is the person with whom they have been dealing; in fact, the description must be such as to enable the party to make such investigations as would be necessary for his protection before he either advanced money or supplied goods on credit.(h)

Description of the attesting witness.

The object in requiring a description of the residence and occupation of the attesting witness is, that any person having an interest in making inquiries as to the goods of another with whom he is about to deal, or to issue or act upon process of execution against them, should be able to apply to the attesting witness for information for the purpose of making any necessary inquiries to guide his conduct;(i) and that information, it is intended, should be furnished to him by the affidavit, coupled, in case of any ambiguity, with the copy bill of sale, to which the inquirer also has access. A description ought to be held sufficient if an ordinary person, by

(a) *Exp.* Knightley, *re* Moulson, 30 W. R. 844; 46 L. T. 776; 51 L. J. Ch. 823.

(b) Yates *v.* Ashcroft, 47 L. T. 337; 31 W. R. 156.

(c) *Exp.* Carter, *re* Threappleton, 12 Ch. D. 908.

(d) *Exp.* Bolland, *re* Roper, 21 Ch. D. 543.

(e) Vernon *v.* Cooke, 49 L. J. C. P. 767.

(f) R. S. C., 1883, xxxviii. 16, 17.

(g) Button *v.* O'Neill, 4 C. P. D. 354; 48 L. J. C. P. 368; 27 W. R. 592; 40 L. T. 799. This case overrules on this point London & Westminster Loan Co. *v.* Chase, 10 W. R. 698; 12 C. B. N. S. 730; Brodrick *v.* Scalè, L. R. 6 C. P. 98; 40 L. J. C. P. 130; 19 W. R. 386; 23 L. T. 864; and the authorities deciding that the description required is that at the time of making or giving the bill of sale.

(h) Jones *v.* Harris, L. R. 7 Q. B. 157; 41 L. J. Q. B. 6; 20 W. R. 143; 25 L. T. 702; Murray *v.* Mackenzie, L. R. 10 C. P. 625; 23 W. R. 595; 32 L. T. 777.

(i) Lamb *v.* Bruce, 45 L. J. Q. B. 538.

ordinary inquiry and the exercise of ordinary intelligence, can ascertain where he will find the object of his search. (a)

Description in the affidavit.

Such description of the residence and occupation of the grantor and attesting witness must be given in the affidavit, either expressly or by direct reference to the bill of sale verifying the description there given; nor does the act require that the bill of sale itself should contain any description, but it does require that a description should be filed together with the bill of sale; and where, with a bill of sale containing a proper description was filed an affidavit stating the time when the bill of sale was made, but silent as to any description of the grantor or attesting witness, it was held the section was not complied with; (b) although if the affidavit states the bill of sale to have been made between the parties mentioned in it, (c) or if it recites the bill of sale, following the description of the parties given therein, although not in terms verifying them, (d) it will be sufficient.

If the affidavit contains no description, or if the bill of sale and affidavit differ, the bill of sale cannot be used to supply the defect, (e) but where the description given in the affidavit is merely insufficient or ambiguous, and the identity of the party is not fixed by reason of such ambiguity, the bill of sale may be referred to in order to explain and supplement the description in the affidavit. Thus, where the affidavit described the grantor as residing at "Dynevor Lodge," and deposed that the paper writing thereto annexed was a true copy of the bill of sale, in which a full and proper description was given, it was held that although the description in the affidavit, if taken alone, was clearly insufficient, the defect might be cured by reference to the bill of sale; (f) and so, where an attesting witness was insufficiently described in his affidavit, the description was allowed to be supplemented by that contained in the attestation clause of the bill of sale which had been verified by the affidavit; (g) indeed it would seem that the affidavit will be sufficient if, on comparison with the bill of sale, it appears to have been made by the attesting witness, although not expressly stating that the deponent was the attesting witness. (h)

Where the affidavit gave a sufficient description of the witness in the introductory part, but the description was left blank in the

(a) Blount *v.* Harris, 48 L. J. Q. B. 159; 27 W. R. 202; 39 L. T. 465; 4 Q. B. D. 603.
(b) Hatton *v.* English, 26 L. J. Q. B. 161; 7 E. & B. 94; 3 Jur. N. S. 294.
(c) Foulger v. Taylor, 5 H. & N. 202; 29 L. J. Ex. 154; 1 L. T. N. S. 57; Banbury *v.* White, 2 H. & C. 300; Sladden *v.* Serjeant, 1 F. & F. 323.
(d) Wilcoxon *v.* Searby, 29 L. J. Ex. 154.
(e) Pickard *v.* Bretz, 5 H. & N. 9; 29 L. J. Ex. 18; 8 W. R. 90; 1 L. T. N. S. 45.
(f) Jones *v.* Harris, L. R. 7 Q. B. 157; Thorpe *v.* Brown, L. R. 2 H. L. 220; 15 W. R. 1146.
(g) *Exp.* Mackenzie, *re* Bent, 42 L. J. Bank. 25; 28 L. T. 486.
(h) Routh *v.* Roublot, 1 E. & E. 850; 28 L. J. Q. B. 240.

body of the affidavit, registration was supported by the Queen's Bench Division; North, J., holding that a description in the introductory part was sufficient, and Manisty, J., deciding on the ground that the attestation clause, which properly described the witness, was incorporated with the affidavit by which it was verified.(a)

If, however, the description in the affidavit is not merely insufficient, but untrue or mis-stated, the defect cannot be cured by reference to the bill of sale, and so it was held where, in the attestation clause, the witness subscribed himself clerk to a solicitor, but in the affidavit was described as a gentleman.(b)

Residence.

The residence to be described is the place where a person resides at the time of registering the bill of sale, which, for the purposes of the section, is the place where he is most likely to be found thus, it may be his place of business;(c) or, if a clerk, his employer's place of business,(d) and the particularity required in the description is a question of degree, depending on the circumstances of the case,(e) the object being the identification of the parties; thus, in some cases probably the street and even the number of the house would be necessary, and a mis-statement of the number, calculated to mislead, has been held fatal.(f) The description "of the City of Cork," has been held too general,(g) but where a witness was described as of Hanley, in the County of Stafford, it being proved that hundreds of letters had reached the witness with the address of Hanley alone, it was held that the description was sufficient.(h)

Bacon, V.-C., is reported to have held that if a person has two residences, both should be described; but the decision appears to have turned on the facts of the case, in which the grantor was a railway contractor, engaged at the time in the construction of a railway at Bury, in Lancashire, with business chambers at Westminster, and a private residence at Kilburn. The Vice-Chancellor held insufficient the description of the grantor as "residing at No. 1, Westminster Chambers, Victoria Street, in the County of Middlesex, Railway Contractor."(i)

In another case, in which the description was upheld, the proprietor of a travelling circus, then at Southampton, gave a bill of sale over his circus property, describing himself as of a London

(a) Blaiberg *v.* Parke, 10 Q. B. D. 90; 31 W. R. 246; 52 L. J. Q. B. 110; 48 L. T. 311.

(b) Brodrick *v.* Scalè, L. R. 6 C. P. 98; Murray *v.* Mackenzie, L. R. 10 C. P. 625.

(c) Hewer *v.* Cox, 30 L. J. Q. B. 73; 9 W. R. 143; 6 Jur. N. S. 1339; 3 L. T. 508.

(d) Attenborough *v.* Thompson, 2 H. & N. 559; 27 L. J. Ex. 23; Blackwell *v.* England, 8 E. & B. 541; 27 L. J. Q. B. 124.

(e) Briggs *v.* Boss, L. R. 3 Q. B. 270; 37 L. J. Q. B. 101; 16 W. R. 480 Thorp *v.* Browne, L. R. 2 H. L. 220.

(f) Murray *v.* Mackenzie, L. R. 10 C. P. 625.

(g) *Re* Hams, 10 Ir. Ch. 100; 1 L. T. N. S. 467.

(h) Briggs *v.* Ross, L. R. 3 Q. B. 270.

(i) Wallis *v.* Smith, W. N. 1882, p. 77.

address, "now carrying on business at Southampton," he not having resided at the London address for six years, but being the owner of the house, which he permitted a relative to occupy;[a] and so where the grantor was described as of his residence, "stone merchant and quarry owner," it was held sufficient, although he carried on business as lessee of stone quarries at other places.[b] Indeed, in most cases it would seem sufficient, when a person has two or more addresses, to describe him as of the principal one, for if the bill of sale contains a description of the residence of the grantor, the Act is literally complied with, and the Court has no power to enlarge it; thus, where a licensed victualler residing and carrying on business in a public-house called the "Three Cups," also owning another public-house known as "The Golden Anchor," the business of which was carried on for him by his father, in whose name the licence was taken out, gave a bill of sale over property at the "Three Cups," in which he was described as a licensed victualler, but only as of the "Three Cups," no reference being made to the "Golden Anchor," the description was held sufficient.[c] It may be, that if a person having two residences, assigns property at one of them, a description of his other residence would not satisfy the statute.[d]

When a bill of sale is executed by two grantors, one only of whom is in possession of the goods, it is not sufficient that the affidavit contains a description of such one only who is so in possession.[e] Residence.

In another case, however, a bill of sale described the grantors, father and son, by their true addresses, adding that they were both mantle manufacturers, carrying on business together under a specified firm. They had formerly carried on that business, but at the time of the execution of the bill of sale the partnership had been dissolved, and the business was carried on by the father alone, the son being in his employment as clerk. The property comprised in the deed belonged to the father alone, though both father and son joined in the assignment; and as against the trustee in the father's bankruptcy, it was held that there was no misdescription—firstly, because the son, not being a bankrupt, any misdescription of him was immaterial; and, secondly, the statement that the father carried on business with his son was not misleading, and might be rejected as mere surplusage.[f] A Company is sufficiently described by its incorporated name as of its principal office.[g]

(*a*) Cooper *v.* Ibberson, 29 W. R. 566; 44 L. T. 309.

(*b*) *Exp.* Knightly, *re* Moulson, 51 L. J. Ch. 823.

(*c*) *Exp.* Probyn, *re* Barrett (C. A.), Sols. J., 1880, 344; *c. f. Exp.* National Mercantile Bank, *re* Haynes, 28 W. R. 848.

(*d*) *Exp.* Hooman, *re* Vining, L. R. 10 Eq. 63; *Exp.* Jerningham, 47 L. J. Bank. 115; 27 W. R. 157; 9 Ch. D. 466; 39 L. T. 185.

(*e*) Hooper *v.* Parmenter, 10 W. R. 648.

(*f*) *Exp.* Popplewell, *re* Storey, 21 Ch. D. 73.

(*g*) Shears *v.* Jacob, L. R. 1 C. P. 513.

Occupation.

Occupation means the principal business of one's life, vocation, trade, calling; the business which a man follows to procure a living or obtain wealth: (a) thus, if a man has any office or occupation, "esquire" or "gentleman" is not a sufficient description; (b) and such a description of the lessee and manager of a theatre has been held improper, (c) and to describe a spirit retailer as a "trader" has been held too general, (d) but the description in a petition for liquidation of a farmer as a "cattle dealer" has been held sufficient. (e) A merchant, (f) which term has been held to include a person who was a shipbroker and coal merchant, (g) a government clerk, (h) a silk buyer, (i) a law clerk, (j) a solicitor, (k) or his clerk, (l) must be described as such, but in describing a clerk it is unnecessary to state his master's occupation. (m) When in an affidavit of execution the attesting witness was described as an accountant, being in fact clerk to an accountant, the business being managed by the deponent, who was allowed occasionally to do accountant's business on his own account, the name of the principal being over the door, it was held that the affidavit contained a sufficient description of the witness's occupation, (n) but where the grantor of a bill of sale, described as an accountant, was a clerk in the accountant's department at the Euston Station of the London and North Western Railway, and in his leisure time was occasionally employed to balance tradesmen's books, the description was held insufficient. (o)

A woman who carried on a farm which had belonged to her deceased husband, merely as his executrix, and not with a view to taking permanently to it, and had no other occupation, was held sufficiently described as a widow. (p) In another case the grantor was described as a widow, and about to remove to a hotel named in

(a) Tuton *v.* Sanoner, 3 H. & N. 283; 27 L. J. Ex. 293; 6 W. R. 545.

(b) Brodrick *v.* Scalè, L. R. 6 C. P. 98; Allen. *v.* Thompson, 25 L. J. Ex. 249; 1 H. & N. 15; 4 W. R. 506; 2 Jur. N. S. 451; Adams *v.* Graham, 33 L. J. Q. B. 71; 12 W. R. 282; 9 L. T. 606; 10 Jur. N. S. 356.

(c) *Exp.* Hooman, *re* Vining, L. R. 10 Eq. 63.

(d) James *v.* Macken, L. T. J. 1879, p. 139.

(e) *Exp.* Kirkwood, *re* Mason, 27 W. R. 806; 11 Ch. D. 724; 40 L. T. 566.

(f) *Re* O'Connor, 27 L. T. O. S. 27.

(g) Gugen *v.* Sampson, 4 F. & F. 974.

(h) Grant *v.* Shaw, L. R. 7 Q. B. 700; 41 L. J. Q. B. 305; 27 L. T. 602; Allen *v.* Thompson, 25 L. J. Ex. 249.

(i) Adams *v.* Graham, 33 L. J. Q. B. 71.

(j) M'Cue *v.* James, 19 W. R. 158.

(k) Tuton *v.* Sanoner, 27 L. J. Ex. 293.

(l) Dryden *v.* Hope, 9 W. R. 18; Brodrick *v.* Scalè, L. R. 6 C. P. 98; Beales *v.* Tennant, 29 L. J. Q. B. 188; 1 L. T. 295; 6 Jur. N. S. 628.

(m) Lamb *v.* Bruce, 45 L. J. Q. B. 538.

(n) Briggs *v.* Boss, L. R. 3 Q. B. 268.

(o) Larchin *v.* North Western Deposit Bank, L. R. 10 Ex. 64; 42 L. J. Ex. 134; 23 W. R. 325; 28 L. T. 359.

(p) Luckin *v.* Hamlyn, 21 L. T. 366; 18 W. R. 43.

the bill of sale. It appeared that she had been a licensed victualler for several years until about a month previous, and intended to, and shortly afterwards did, resume that occupation, but the Court of Appeal held that her description as a widow was sufficient, and that it is unnecessary to state any former or future occupation.(a)

Occupation.

If the principal occupation is stated, it would seem the section is satisfied: thus, when a foreman tailors' cutter, who took in lodgers at his house, where his wife also kept a boarding school, was described as a foreman tailors' cutter, the description was held sufficient, that being his substantive occupation;(b) and a farmer who had been in the habit of discounting bills was held sufficiently described as a farmer, without adding bill discounter to his description; but if farming had not been his substantive occupation, as, for instance, if he merely farmed for amusement, it seems it would have been otherwise.(c)

A peer may be described by his title,(d) and "gentleman" will be a sufficient description of one who was unoccupied at the time of registering the bill of sale, or who had never been engaged in any regular occupation,(e) if such an addition is not so far inapplicable to the rank of society in which he moves as to mislead, for all that the Act means is, that if the party has an occupation he must state it; it does not mean that if he has none he must expressly say so;(f) thus, a medical student, who had only temporarily acted as surgeon's assistant, was held properly described as gentleman:(g) and where in the affidavit a blank was left for the description of the occupation of the attesting witness, which had not been filled in, but it appeared he had been without occupation for some years past, the registration was supported.(h)

There is nothing in the Act which requires a son, bearing the same name as his father, to describe himself as "the younger" in a bill of sale and affidavit,(i) indeed it would seem that a mistake as to the grantor's name is immaterial, as the section makes no provision as to the name, merely requiring a description of the residence and occupation.(j)

Care should be taken to describe the occupation followed at the

(a) *Exp.* Chapman, *re* Davey, 45 L. T. 268.

(b) *Exp.* National Deposit Bank, *re* Wills, 26 W. R. 624.

(c) *Exp.* National Mercantile Bank, *re* Haynes, 28 W. R. 848.

(d) *Re* Earl of Limerick, 7 Ir. Jur. 65.

(e) Gray *v.* Jones, 14 C. B. N. S. 743.

(f) Smith *v.* Cheese, 45 L. J. C. P. 156; 1 C. P. D. 60; 24 W. R. 368; 33 L. T. 670; Morewood *v.* South Yorks. Rail., 3 H. & N. 798.

(g) Sutton *v.* Bath, 1 F. & F. 152.

(h) *Exp.* Young, *re* Symonds, 42 L. T. 744; 28 W. R. 924.

(i) Foulger *v.* Taylor, 1 L. T. N. S. 57.

(j) *Exp.* M'Hattie, *re* Wood, 10 Ch. D. 398; 39 L. T. 373; 27 W. R. 327; 48 L. J. Bank. 26.

time of registering the bill of sale;[a] for though no former or proposed occupation need, it seems, be stated,[b] where the grantor was described as "until lately a commercial town traveller and agent," it was held that his occupation at the time of registration was not sufficiently described;[c] and so where the grantor, who had formerly carried on a wine, spirit and general business as sole owner under the style of a Supply Association, was described as so carrying on business under such style—he in fact for some months having ceased to be owner, or to have any share in the business, where he remained only as paid manager under the supervision of the person whose property the business had become—the occupation was held mis-described, although the licences were taken out in the grantor's name, which still appeared over the shop.[d] When, however, between the execution of the bill of sale and the date of registration the grantor absconded, it was held to be sufficient to describe his residence as given in the bill of sale.[e]

Description in the affidavit.

In every case the test will be, is the misdescription one that is calculated to deceive creditors,[f] and the burden of proof is on the person seeking to show that the residence or occupation of the grantor or witness is other than described.[g] If the description is substantially correct, so that creditors would not be misled, an erroneous addition, as of a wrong county, will not vitiate the bill of sale,[h] and the sufficiency of the description must depend on the circumstances of each case and is a question for the judge and not for the jury.[i]

When there are two attesting witnesses, the bill of sale will be invalid unless both are described in the affidavit;[j] but where a bill of sale was executed under the common seal of a trading Company, and opposite the seal were set the names of two of the Directors, who purported to sign as Directors, and the document was countersigned by the Secretary, who in the affidavit of execution stated that he saw the bill of sale sealed with the seal of the Company, and countersigned by two of the Directors whose signatures appeared subscribed thereto, the affidavit was held sufficient without giving a description

(*a*) Button *v.* O'Neill, 4 C. P. D. 354.

(*b*) *Exp.* Chapman, *re* Davey, 45 L. T. 268.

(*c*) Castle *v.* Downton, 5 C. P. D. 56; 41 L. T. 528; 49 L. J. C. P. 6.

(*d*) Cooper *v.* Davis, 31 W. R. 721; 48 L. T. 831.

(*e*) *Exp.* Kahen, *re* Hewer, 46 L. T. 856.

(*f*) *Exp.* M'Hattie, *re* Wood, 10 Ch. D. 398; 39 L. T. 373; 48 L. J. Bank. 26; Corbett *v.* Rowe, 25 W. R. 59.

(*g*) Sutton *v.* Bath, 27 L. J. Ex. 388; 3 H. & N., 382; Grant *v.* Shaw, L. R. 7 Q. B. 700; *see* Castle *v.* Downton, 5 C. P. D. 56.

(*h*) Hewer *v.* Cox, 30 L. J. Q. B. 73; Corbett *v.* Rowe, 25 W. R. 59; *Exp.* McHattie, *re* Wood, 39 L. T. 373.

(*i*) Phillips *v.* Burt, 2 F. & F. 862.

(*j*) Pickard *v.* Marriage, 1 Ex. D. 364; Nicholson *v.* Cooper, 27 L. J. Ex. 393.

of the Directors whose names appeared on the bill of sale.[a] Registration is not invalid on the ground that an affidavit of execution by the attesting solicitor is sworn before a solicitor acting for the grantor and grantee.[b]

If the affidavit is defective, application should be made to remove the bill of sale from the file, and for leave to file a fresh copy with amended affidavit,[c] and for the rectification of the register under the provisions of sec. 14, by which any Judge of the High Court, on being satisfied that the omission or mis-statement of the name, residence, or occupation of any person was accidental or due to inadvertence, may, in his discretion, order such omission or mis-statement to be rectified in the manner prescribed.

Registration.

[3] Under the Bills of Sale Act, 1854, it was optional to file the original bill of sale or a copy, and the officer could not refuse to receive the original, but by the section the copy, and not the original, is to be filed with the registrar. It was held that the alteration or destruction of the original schedule before registration did not affect the registration of a copy, the property in the goods passing on the execution of the bill of sale.[d]

It is not the registrar's province to inquire whether the bill of sale and affidavit comply with the provisions of the Act, his duties being purely ministerial.[e]

By sec. 57 of the Stamp Act, 1870,[f] a copy of a bill of sale is not to be filed in any Court unless the original, duly stamped, is produced to the proper officer. The absence of a proper stamp would not, however, invalidate the registration.

As by the section, coupled with sec. 8 of the amendment Act, a bill of sale shall be filed with the registrar within seven clear days after the execution thereof, it would seem that a bill of sale made or given on the first of the month will be in time if registered on the eighth, unless that day happens to be a Sunday, or other day on which the registrar's office is closed, when registration will be valid if made the following day on which the office is open.[g] A bill of sale executed in any place out of England shall be registered within seven clear days after the time at which it would, in the ordinary course of post, arrive in England, if posted immediately after the execution thereof.[h]

(a) Shears *v.* Jacob, L. R. 1 C. P. 513; Deffell *v.* White, L. R. 2 C. P. 144; 36 L. J. C. P. 25; 15 W. R. 68; 15 L. T. 211.
(b) Vernon *v.* Cooke, 49 L. J. C. P. 767.
(c) *Re* Wright, 27 L. T. 192; *see* also sec. 14 [1878].
(d) Green *v.* Attenborough, 3 H. & C. 468; 34 L. J. Ex. 88; 13 W. R. 185; 11 L. T. 513.
(e) Needham *v.* Johnson, 8 B. & S. 190; 15 W. R. 346; 15 L. T. 467.
(f) 33 & 34 Vic. cap. 97.
(g) Sec. 22 (1878); Williams *v.* Burgess, 12 Ad. & E. 635.
(h) Sec. 8 (1882).

Defeasance, condition, or declaration of trust to be deemed part of bill of sale.

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

Defeasance or condition.

A defeasance is an instrument which defeats the force or operation of some other deed or estate, and that which in the same deed is called a condition, when in a separate deed, is a defeasance.[a]

Conditions may be either precedent, subsequent or inherent; a condition is precedent where, unless it is complied with, the estate does not arise; it is subsequent where, if it is broken, the estate is defeated; it is inherent where the estate is qualified, restrained or charged; in every case it denotes something which prejudicially affects the interest of the donee.[b] It was accordingly held, under sec. 2 of the Bills of Sale Act, 1854, that the defeasance, condition, or declaration of trust contemplated by the section was such as is usually found appended to a bill of sale, affecting its operation as between the grantor and grantee, by diminishing the rights of the grantee in the estate purported to be granted, or affecting them prejudicially in favour of the grantor, and did not include an independent agreement not qualifying the rights of the grantee; and that the object of the provision was to prevent creditors being defrauded by sham bills of sale, by which the whole interest of the grantor is apparently transferred, whereas in reality he retains some interest in the subject of the transfer.[c] Therefore, when with a registered bill of sale expressed to be made in consideration of £130, to be repaid by certain instalments without interest, the whole to become payable on default in any instalment, the sum in fact advanced being only £100, the £30 being charged by way of bonus and interest, a written memorandum was signed by the mortgagor at the same time as the bill of sale, which stated that the £30 was to be paid in full, notwithstanding that the money secured by the bill of sale

(*a*) Com. Dig. Defeasance.

(*b*) Co. Litt. 201 a; *Exp.* Collins, *re* Lees, 44 L. J. Bank. 78; L. R. 10 Ch. 367; 32 L. T. 108; 23 W. R. 862, per James, L. J.

(*c*) Robinson *v.* Collingwood, 17 C. B. N. S. 777; 34 L. J. C. P. 18; 13 W. R. 84; 10 Jur. N. S. 1080; 11 L. T. N. S. 313; Exp. Southam, 17 Eq. 578; 43 L. J. Bank. 39; 22 W. R. 456; 30 L. T. 132.

might be repaid, or the mortgagee's right under it enforced before the expiration of the time limited for payment, want of registration of the memorandum securing a bonus to the grantee was held not to be such a defeasance or condition within the section as to affect the validity of the bill of sale.(a) Where, however, a person purchased household furniture, and being unable to pay for it at the time, offered to do so by weekly instalments, which the vendor consented to accept, a bill of sale being given to secure the purchase-money, which was made payable in one sum, it was held that the antecedent parol arrangement to pay by instalments was a condition within the section, and as such should have been reduced into writing, and have appeared on the registered copy of the bill of sale.(b) On the other hand, it is unnecessary to state in the bill the name of the person really advancing the money, unless there be some trust in favour of the vendor; and where, on an execution, the plaintiff paid the sheriff the amount of levy and bought the goods by bill of sale, but, as a fact, he was merely solicitor for the person finding the money, the transaction was held valid against a subsequent execution creditor.(c)

Defeasance or condition.

A verbal agreement not to register a bill of sale, in consideration of which a larger bonus is given, is not a condition or defeasance, and need not appear on the filed copy.(d)

It may be laid down generally, that if there is a trust between the grantor and grantee rendering the deed a contrivance to secure the property for the debtor's benefit, or a device against the general body of his creditors, as, for instance, a contract to obtain some additional advantage in the event of bankruptcy, which prevents the debtor's property being equally distributed, it will be void both at common law and as against the policy of the bankruptcy laws;(e) and a power of revocation has always been deemed a strong mark of fraud, for it virtually leaves the property in the settlor's hands: and so it has been held where an unlimited power of sale or mortgage is reserved, as showing that the settlor did not *bonâ fide* intend to put the property out of his reach.(f)

Under 3 Geo. IV. c. 39, sec. 4, in which the words are the same as in the present section, it has been held not to be an objection to a warrant of attorney that part of the defeasance was written on a separate sheet of paper annexed.(g)

(a) *Exp.* Collins, *re* Lees; L. R. 10 Ch. 367.
(b) *Exp.* Southam, 43 L. J. Bank. 39.
(c) Robinson *v.* Collingwood, 17 C. B. N. S. 777.
(d) *Exp.* Popplewell, *re* Storey, 21 Ch. D. 73.
(e) *Exp.* Mackay, *re* Jeavons, L. R. 8 Ch. 643; 42 L. J. Bank. 68; 28 L. T. 828; 21 W. R. 664; *Exp.* Furber, *re* Pellew, 6 Ch. D. 181; 36 L. T. 668.
(f) Tarback *v.* Marbury, 2 Vern. 510.
(g) Burdekin *v.* Potter, 1 Dowl. N. S. 134.

Priority of title.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of date of their registration respectively as regards such chattels.

Some doubt arose whether the sub-section applied as between registered and unregistered securities, and the Court of Common Pleas held that its application was confined to registered bills of sale. This decision was however reversed on appeal, and where there are conflicting bills of sale the date of registration determines their priority; and if one of them is unregistered, the registered document will prevail, for the sub-section is of general application, and does not confer priority only as against the persons named in sec. 8 of the principal Act; thus, the title of the holder of a prior unregistered bill of sale is postponed to that of a mortgagee claiming under a subsequent duly registered bill of sale over the same chattels;[a] and it is immaterial whether the grantee under the registered or unregistered instrument is in possession of the goods.[b]

Formerly registration conferred no priority against claimants other than execution creditors or a trustee in bankruptcy;[c] nor did a subsequent bill of sale holder obtain any priority by taking possession; and where a non-trader gave, on the 10th February, a bill of sale to A. as security for advances, and on the 28th February a second bill of sale of the same goods to B., who had no notice of A.'s bill, both bills being duly registered; on B. taking possession and selling the goods after notice of A.'s claim, the debtor having become bankrupt between the seizure and sale, it was held that B. had not acquired any priority over A., since A.'s legal title to the goods was complete against B. without taking possession.[d] When, however, execution was levied, an unregistered security was displaced altogether and the title of a registered bill of sale holder prevailed;[e] nor could the holder of a prior unregistered bill of sale set up a duly registered later bill of sale against a trustee in bankruptcy,[f] and a registered mortgagee was entitled, as against the debtor's trustee and a prior unregistered mortgagee, to such goods

(*a*) Conelly *v.* Steer, 7 Q. B. D. 520; 45 L. T. 402; 29 W. R. 529; 50 L. J. Q. B. 326.

(*b*) Lyons *v.* Tucker, 7 Q. B. D. 723; 45 L. T. 403, reversing s.c. 6 Q. B. D. 660.

(*c*) Hills *v.* Shepherd, 1 F. & F. 191.

(*d*) *Exp.* Allen, *re* Middleton, 40 L. J. Bank. 17; 11 Eq. 209; 19 W. R. 274; Payne *v.* Cales, 38 L. T. 365.

(*e*) Richards *v.* James, 36 L. J. Q. B. 116.

(*f*) Nicholson *v.* Cooper, 27 L. J. Ex. 393; Hunter *v.* Turner 32 L. T. 556; 23 W. R. 792.

as had not been seized by the latter before an act of bankruptcy.[a] But on an interpleader between the grantee of a bill of sale and an execution creditor, the latter was permitted to defeat the title of the former by setting up a prior bill of sale to a third party.[b] And the fact that a bill of sale is set aside as void against the trustee in bankruptcy of the grantor does not entitle the trustee to stand in the place of the grantee, and thus acquire priority over the grantee under a valid bill of sale subsequently executed by the grantor;[c] nor could a trustee take advantage of an execution void against himself, to invalidate a bill of sale comprising chattels which were not in the apparent possession of the grantor when the petition for bankruptcy or liquidation was filed.[d] The holder of an absolute bill of sale who has seized and sold is under no liability to the holder of a second bill of sale for losses on the sale.[e]

Priority of title.

As registration is now essential to the validity of bills of sale, which, by sec. 8 of the amendment Act are void, unless registered, the clause would seem to apply and confer priority, although the second mortgagee takes his security with notice of a prior mortgage, at all events where the time for registering the first bill of sale has elapsed without registration; and it would therefore appear that the rule laid down by Lord Hardwicke in Le Neve *v.* Le Neve,[f] will no longer apply. By that rule, a purchaser with notice of a right in another is liable to the same extent and in the same manner as the person from whom he made the purchase, and an estate in the hands of a subsequent purchaser or mortgagee, with notice of a prior defective mortgage, will be bound by it. It is only when the notice is so clearly proved as to make it fraudulent in the purchaser to take and register a conveyance in prejudice of the known title of another, that the registered deed will be affected,[g] for a purchaser or mortgagee is not bound to make inquiries with a view to the discovery of unregistered instruments, though he may be bound by actual knowledge of them.[h] It would be beyond the scope of this work to enter on the refined and technical doctrine of actual and constructive notice, which will be found fully discussed in the notes to Le Neve *v.* Le Neve,[i] and in the authorities on equity jurisprudence.

(*a*) *Exp.* Leman, *re* Barraud, 4 Ch. D. 23; 46 L. J. Bank. 38; 25 W. R. 65; 35 L. T. 422.
(*b*) Gadsden *v.* Barrow, 23 L. J. Ex. 134; 9 Ex. 514.
(*c*) *Exp.* Payne, *re* Cross, 11 Ch. D. 539; 40 L. T. 564; 27 W. R. 308.
(*d*) *Exp.* Blaiberg, *re* Toomer, 23 Ch. D. 254.
(*e*) Maugham *v.* Sharpe, 17 C. B. N. S. 443; 34 L. J. C. P. 10.
(*f*) Amb. 436; 2 W. & T. L. Cases, 5th ed. 32.
(*g*) Wyatt *v.* Barwell, 19 Ves. 439.
(*h*) Lee *v.* Clutton, 46 L. J. Ch. 48; 24 W. R. 942; 35 L. T. 84.
(*i*) 2 W. & T. L. Cases, 5th ed. 32.

Priority of title.

A bill of sale to secure future advances to a specified amount gives the mortgagor no priority in respect of further advances, after notice of a second mortgage, over advances made by the second mortgagee with notice of the bill of sale.[a]

If the grantee permits the grantor to have possession of the goods, and thus enables him to hold himself forth to the world as having not only the possession but the property in them, as when he is permitted to carry on his trade, a purchaser, in the ordinary course of business, without notice of the bill of sale, will obtain a good title; thus, where a farmer and dealer granted a bill of sale over all his growing crops, goods, chattels and effects, which then or thereafter should be on or about his farm and premises, and was allowed to remain in possession and carry on his farm, it was held that he had implied authority to sell the farm produce in the ordinary course of his business, and that the bill of sale holder had no cause of action against a *bonâ fide* purchaser without notice;[b] and so where the grantor of a bill of sale, being a horse dealer, was by the deed authorised to hold, make use of and possess the goods comprised in it, he covenanting not to dispose of them without the grantee's consent in writing, a purchaser, without notice of the bill of sale, was held to have acquired a good title to a horse, included in the deed, sent by the grantor to a repository for sale by auction, in the ordinary course of his business.[c]

But if the sale is not in the ordinary course of the grantor's business, a purchaser or person dealing with the goods, though without notice of the bill of sale, will be liable in an action of trover at the suit of the grantee—thus the auctioneer who sells them has been held responsible;[d] but where the grantor, without the mortgagee's knowledge, took to the defendant's repository certain horses and harness included in the bill of sale, and entered them for sale by auction, but before they were put up sold them privately in the defendants' yard, the purchase-money being paid to the defendants, who deducted their commission, handing the balance to the grantor, they were held not guilty of a conversion.[e] In another case, where the purchaser of goods by bill of sale from the sheriff permitted the execution debtor to continue in possession, who afterwards executed another bill of sale to another person, it was held that the first bill of sale holder was entitled to recover from the latter;[f] and where the jury found that the grantor sold the goods fraudulently and not in the ordinary way of his business,

(*a*) Hopkinson *v.* Rolt, 9 H. L. Ca. 514.
(*b*) National Mercantile Bank *v.* Hampson, 5 Q. B. D. 177.
(*c*) Walker *v.* Clay, 42 L. T. 369; 49 L. J. C. P. 560.
(*d*) Cochrane *v.* Rymill, 27 W. R. 776; 40 L. T. 744.
(*e*) National Mercantile Bank *v.* Rymill, 44 L. T. 767.
(*f*) Kidd *v.* Rawlinson 2 B. & P. 59.

but that the defendants did not know this and bought the goods *bonâ fide*, judgment was entered for the plaintiffs.(a)

The absence of a covenant by the grantor not to sell or dispose of the mortgaged property does not affect the mortgagee's rights against purchasers from the grantor. (b)

If a person induces another to advance him money on a bill of sale of chattels by representing that they are unincumbered, he having in fact included them in a subsisting prior bill of sale, he is guilty of an indictable false pretence.(c)

Marshalling.

It may not be out of place here to notice the equitable doctrine of marshalling, which is defined as such an arrangement of the different funds of the common debtor of two or more creditors as may satisfy every claim, so far as, without injustice, such assets can be applied in satisfaction thereof, notwithstanding the claims of particular individuals to prior satisfaction out of some one or more of those funds;(d) thus, where one judgment creditor or mortgagee has a right to go upon two funds, belonging to the debtor, for the same debt, and another has a right only upon one of them, the former may be compelled to apply first to the fund which cannot be reached by the latter, so that both may be satisfied.(e)

Any person interested in the equity of redemption, the time for redemption having arrived, may redeem a mortgage, and on tender of the principal money and interest is entitled to delivery of the title deeds and a conveyance of the property;(f) thus a subsequent mortgagee may redeem prior charges on the property,(g) and so it would seem may judgment creditors who have issued execution,(h) and the Court has power to direct a sale.(i)

A second mortgagee in possession of the mortgaged property, who expends money in permanently improving or preserving it, is not entitled, as against a first mortgagee, to any charge on the property for money so expended.(j)

Consolidation.

The doctrine of consolidation does not extend to bills of sale, at least against the parties named in sec. 8 of the principal Act; and the grantee of a bill of sale of chattels seized under an execution is

(a) Taylor *v.* McKeand, 28 W. R. 628; 49 L. J. C. P. 563; 42 L. T. 833; 5 C. P. D. 358.

(b) Payne *v.* Fern, 29 W. R. 441; 6 Q. B. D. 320; 50 L. J. Q. B. 446.

(c) R. *v.* Meakin, 11 Cox, 270. Form of declaration against incumbrances, p. 186.

(d) St. Eq. Jur. 633.

(e) Averall *v.* Wade, Ll. & Goo. 252; Greenwood *v.* Taylor, 1 Russ. & My. 186; *Exp.* Kendal, 17 Ves. 520; Aldrich *v.* Cooper, 8 Ves. 308; 2 W. & T. Leading Cases, 80.

(f) Pearce *v.* Morris, L. R. 5 Ch. 229.

(g) Fell *v.* Brown, 2 Bro. C. C. 279; Inman *v.* Wearing, 3 De G. & S. 729.

(h) Stonehewer *v.* Thompson, 2 Atk. 440; Mildred *v.* Austin, 8 Eq. 220; Earl of Cork *v.* Russell, 13 Eq. 210.

(i) 15 & 16 Vic. c. 86, s. 48.

(j) Landowners, &c. Co. *v.* Ashford, 16 Ch. D. 411.

not entitled to tack a previous mortgage of other property of the grantor, and claim that the surplus proceeds of the chattels, after discharging the sum due under the bill of sale, shall be applied in satisfaction of the prior mortgage, so as to defeat the right of the execution creditor to such surplus.(a)

As between grantor and grantee, the former may, where the bill of sale is made on or after the 1st of January, 1882, redeem it without paying any money due under any separate bill of sale or mortgage on property other than that comprised in the security sought to be redeemed, unless the bills of sale or mortgages, or one of them, show a contrary intention. (b)

Transfer or assignment of bill of sale.

A transfer or assignment of a registered bill of sale need not be registered.

By sec. 11 of the principal Act it is enacted that a renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale; but it would seem that if there is a further advance upon the transfer, registration will be necessary, for the transfer would be an assurance of chattels to secure the additional debt.(c)

In *ex parte* Shaw,(d) it was decided that a transfer made subsequently to 1854, by a mortgagee alone, without the concurrence of the mortgagor, of a bill of sale made before the passing of the Bills of Sale Act, 1854, did not require registration under that Act, or under the repealed Act of 1866, as against the trustee under the bankruptcy of the original mortgagor.

Where goods comprised in a duly registered bill of sale were assigned bonâ fide, but the transfer was not registered, nor was any re-registration of the bill of sale effected, it was held, under the repealed Act of 1866, that after the expiration of five years the original bill of sale became absolutely void.(e)

If part of the amount secured by a duly registered bill of sale has been paid off, and on a transfer of the security the transferee makes a fresh advance to the mortgagor, not, with the sum remaining due, in excess of the sum originally secured, the transfer does not become a bill of sale, and is a good security, without registration, for the amount remaining due on the bill of sale at the time of transfer; but the Court of Appeal declined to express their opinion

(a) Chesworth *v.* Hunt, 5 C. P. D. 266; 28 W. R. 815; 49 L. J. C. P. 507; 42 L. T. 774.

(b) 44 & 45 Vic. c. 41, ss. 2 (vi.), 17.

(c) Wale *v.* Commissioners of Inland Revenue, 4 Ex. D. 270; 48 L. J. Ex. 574; 27 W. R. 916; 41 L. T. 165.

(d) 25 W. R. 686; 36 L. T. 805; 46 L. J. Bank. 114.

(e) Karet *v.* Kosher Meat Supply Association, 2 Q. B. D. 361; 46 L. J. Q. B. 548; 25 W.R. 691; 36 L. T. 694.

whether it was a good security for the further advance, as against the persons named in sec. 8 of the principal Act, without registration;[a] and it would seem that, for the purposes of the Stamp Act, a transfer of a bill of sale, where a further advance is made, is a transfer as to the amount of the original advance, and a new bill of sale to the extent of the further advance.

A bill of sale holder cannot, by transferring his interest to a third party, confer a better title than he himself possesses;[b] thus, where the goods of an execution debtor were assigned by inventory and receipt to a person who again assigned them, neither transaction being registered, and were then again granted by a bill of sale duly registered, remaining all the time in the apparent possession of the execution debtor, it was held by Grove, J. (Lopes, J., *diss.*), that the want of registration of the two prior assignments invalidated the title of the third assignee under the registered bill of sale;[c] and so where a bill of sale holder, whose security was void for want of renewal of registration, sold the goods, they were held liable to seizure at the suit of an execution creditor of the original mortgagor, in whose possession they remained.[d]

Where a person bought of the grantor goods comprised in a bill of sale, paying off the mortgagee, and taking the bill of sale with a receipt purporting to assign the goods to him, it was held under the Bills of Sale Act, 1854, that he did not acquire the mortgagee's rights even to the extent of the money paid, and his claim was postponed to that of the holder of a bill of sale, of which he had no notice, given by the grantor subsequent to the mortgage paid off, but prior to his purchase.[e]

Renewal of registration.

11. (1878.) The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.[1]

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations

(*a*) Horne *v.* Hughes, 29 W. R. 576; 44 L. T. 678; 6 Q. B. D. 676.
(*b*) *Exp.* Odell, *re* Walden, 39 L. T. 333; 48 L. J. Bank. 1.
(*c*) Chapman *v.* Knight, 49 L. J. C. P. 425.
(*d*) Swire *v.* Cookson, 48 L. T. 877.
(*e*) Cooper *v.* Braham, 15 L. T. N. S. 610.

of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A) to this Act annexed.[2]

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.[3]

Renewal of registration.

[1] The amendment Act does not apply to any bill of sale registered before its commencement so long as registration is not avoided by non-renewal; nor does it invalidate as between grantor and grantee a bill of sale registered before its commencement, the registration of which has become void for want of renewal. (*a*)

Where the mortgagee under a bill of sale, which for want of renewal of registration was void against creditors, agreed to sell the goods it comprised, the purchaser giving him a fresh bill of sale, such bill of sale was held to afford no protection as against execution creditors of the original grantor. (*a*)

Bills of sale registered after 1st November, 1882, will require renewal every five years under the principal Act. The repealed Bills of Sale Act, 1866 (29 & 30 Vic. c. 95), formerly regulated the renewal of bills of sale. By sec. 14 of the principal Act, any Judge of the High Court of Justice, on being satisfied that the omission to file an affidavit of renewal within the prescribed time was accidental or due to inadvertence, may extend the time for renewal on such terms as he thinks fit to direct.

[2] It is not the registrar's province to inquire whether this affidavit complies with the provisions of the Act, his duties being purely ministerial. (*b*)

The affidavit should state the names, residences and occupations of the parties as given in the bill of sale, although such description may be erroneous; thus, where the mortgagee was, in the bill of sale, described as of a wrong county, and in the affidavit her right address was given, which did not appear in the bill of sale, it was held that the affidavit did not comply with the provisions of the section, and therefore the renewal of registration was invalid. In such a case the description should have been stated as in the bill of sale, followed by a description of the true residence. (*c*)

[3] A transfer or assignment of a registered bill of sale does not require registration. (*d*) Under the Bills of Sale Act, 1866, which

(*a*) Swire *v.* Cookson, 48 L. T. 877.

(*b*) Needham *v.* Johnson, 15 W. R. 346; Form of affidavit, p. 188.

(*c*) *Exp.* Webster, *re* Morris, 31 W. R. 111; 22 Ch. D. 136; 48 L. T. 295; 52 L. J. Ch. 375.

(*d*) Sec. 10, cl. 5 [1878].

Sec. 11. [1878.]

Sec. 11. [1882.]

required the registration of a bill of sale to be renewed once in every five years, where the goods under a bill of sale originally duly registered, were within five years assigned *bonâ fide*, but the assignment was not registered, nor was any re-registration of the bill of sale effected, it was held that after the expiration of the five years the bill of sale became absolutely void, and the goods, being in the possession of the grantor, were not protected against his creditors.(a)

Local registration of contents of bill of sale.

11. (1882). Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

This provision for local registration is a new one, and will afford additional facilities to creditors for ascertaining the position of persons with whom they are about to deal. By sec. 60, with

(a) Karet *v.* Kosher Meat Supply Association, 2 Q. B. D. 361.

Sec. 12.] [1878.

schedule 2 of the Bankruptcy Act, 1869, the London bankruptcy district comprises the City of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the districts of the Metropolitan County Courts of Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, and Whitechapel. This definition of the London bankruptcy district is continued by the Bankruptcy Act, 1883, sec. 95 (1), Sched. 3.

By the Rules of the Supreme Court, December, 1882,[a] it is directed that the abstract of the contents of a bill of sale shall be in the form given in the schedule thereto.[b] The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office, and dated on the day on which it is sent by post to the registrar of the County Court named therein.[c] The registrar shall number the abstracts in the order in which they shall be received by him, and shall file and keep them in his office.[d]

The registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor, such surname, with his Christian name or names, address, and description, and the number which he has affixed to the abstract.[e]

The regulations for searches in local registries differ in some respect from those prescribed by sections 16 of the principal and amendment Acts, and are as follows:—The registrar shall allow any person to search the index at any time during which he is required by the County Court rules, for the time being, to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract upon payment of one shilling for each abstract inspected.[f] He shall also, if required, cause an office copy to be made of any abstract, at a fee for making, marking and sealing the same, of sixpence per folio.[g]

Form of register.

12. (1878.) The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process,

(a) P. 177. (b) Rule 3, Form, p. 190. (c) Rule 4. (d) Rule 5. (e) Rule 6. (f) Rule 7. (g) Rule 8.

Sec. 12. [1878.]

Sec. 12. [1882].

then the name, residence and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

By R. S. C., 1883 (Order lxi., Rule 18), there shall be entered in proper books kept for the purpose, the time of delivery of every document filed at the Central Office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.

Bill of sale under £30 to be void.

12. (1882.) Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

The proposed limit was originally £50, and the amount named in the section is the result of a compromise. A bill of sale given in consideration of £30 would not be within the section; and it will be observed that the test is the amount of the consideration, and not the sum secured by the bill of sale.

Sec. 13, 14. [1878.]

When chattels may be removed or sold.

13. (1882.) All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

The section will, in a great measure, prevent the hardship and extortion too often practised upon borrowers of money who had made default in strict observance of the stipulations of the deed, and by sec. 7 of the amendment Act, which limits seizure to certain cases of default, it is provided that the grantor may, within five days from seizure, apply to the Court or a Judge, who, if satisfied that by payment of money or otherwise the cause of seizure no longer exists, may restrain the grantee from removing or selling the chattels seized, or may make such other order as may seem just.

The section will, however, increase the danger of distraint upon the chattels for rent, rates and taxes, but seizure without removal will prevent the operation of the reputed ownership clause.

The five clear days during which the goods are to remain on the premises are to be reckoned exclusive of the days of seizure and removal.

The registrar.

13. (1878.) The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875,[a] shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar.

By Order lxi., Rule 25, Rules of S. C., 1883, the Masters shall execute the office of registrar for the purposes of the Acts, and any one of the Masters may perform all or any of the duties of the registrar.

Rectification of register.

14. (1878.) Any judge of the High Court of Justice, on being satisfied that the omission to register

(a) 36 & 37 Vic. c. 66; 38 & 39 Vic. c. 77.

a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may, in his discretion, order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

The tendency of the cases for some time past has been to relax the severity of the rule that a slight misdescription vitiates a bill of sale; thus, it has been held that an inaccuracy not calculated to mislead,[a] or a mere clerical error, as in the spelling of a name,[b] or an obvious mistake in the date, as where 1806 was inserted for 1876,[c] or consideration, as where £1,000 was inserted instead of £100,[d] will not invalidate registration; but it will now be safer, in all cases where any doubt exists as to the materiality of the error, to adopt the course pointed out by the section; or to prepare and register a new bill of sale, reciting that it is given for the purpose of correcting a material error in the prior security.

Where a bill of sale was executed on the 31st of December, 1860, and the jurat of the affidavit purported to have been sworn on the 10th of January, 1860, it was held that the defect, being a mere clerical error, might be amended.[e]

The former practice in case of insufficient registration was within twenty-one days to move on affidavit for leave to take the bill off the file, and to re-register it with a fresh affidavit.[f] It has been held that the section is not retrospective, and there is no power to enlarge the time for renewal of registration of a bill of sale void for want of renewal of registration at the time of the commencement of the principal Act.[g]

Orders under the section are made without prejudice to the rights of parties acquired when the bill is actually registered.

(*a*) *Exp.* McHattie, *re* Wood, 10 Ch. D. 398; *Exp.* Kahen *re* Hewer, 46 L. T. 856.

(*b*) Gardnor *v.* Shaw, 24 L. T. 319; 19 W. R. 753; Corbett *v.* Rowe, 25 W. R. 59.

(*c*) Lamb *v.* Bruce, 45 L. J. Q. B. 538.

(*d*) Elliott *v.* Freeman, 7 L. T. N. S. 715.

(*e*) Hollingsworth *v.* White, 10 W. R. 619.

(*f*) *Re* Wright, 27 L. T. 192; *re* O'Brien, 10 Ir. C. L. App. 33.

(*g*) Askew *v.* Lewis, 48 L. T. 534; 31 W. R. 567; 10 Q. B. D. 477.

Sec. 15. [1878.]

Bill of sale not to protect chattels against taxes, poor and parochial rates.

14. (1882.) A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale, which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Before the section, by the statutes authorising distress for rates, only the goods of the person assessed could be levied, this being the usual rule with regard to distress for fines or amerciaments, as distinguished from distraint for rent, to which, with some few exceptions, all goods on the premises are subject, whether of the tenant or a stranger; thus, where by bill of sale the grantor had parted with his property in the goods, they were not subject to distress for rates, although liable to the landlord's claim for rent.

The levy may be upon the goods of the person assessed, not only in the place for which assessment is made, but in any other place in the same county, or if no sufficient distress is there found, then in any other county on oath made before justices.[a] Wearing apparel and bedding of the person assessed and his family, and to the value of £5, the tools and implements of his trade, are not to be levied under a distress for rates.

Entry of satisfaction.

15. (1878). Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Under the repealed Act of 1854, the duty of ordering satisfaction to be entered was discharged by a Judge. The practice was for the debtor to obtain from the creditor a certificate of the satisfaction of his claim, signed in the presence of a solicitor. This certificate, together with payment of the debt, was verified by the affidavit of the solicitor attesting the creditor's consent; and on this evidence an order was made to enter up satisfaction, which was then endorsed on the filed bill of sale at the Queen's Bench Office.

Under the present practice a memorandum of satisfaction may be ordered to be written upon a registered copy of a bill

(a) Stone's Pr. for JJ. P., 9th ed. 532.

of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the Central Office. Where this consent cannot be obtained, the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.[a]

A form of summons and affidavit with consent will be found in Appendix A, Part II.

It will be observed that the present rule dispenses with verification by a solicitor; but, in practice, some of the Masters require the consent to be so verified.

Satisfaction.

Although satisfaction has not been entered, the holder of a bill of sale which has been actually satisfied cannot set up the bare legal property vested in him against an execution creditor.[b] The release of the grantor of a bill of sale by a discharge under the bankruptcy laws is a satisfaction of the debt, but the security is preserved by sec. 12 of the Bankruptcy Act, 1869, so far as it operates as an actual assignment of chattels; for although the Act discharges the bankrupt, it does not discharge the property which he has made liable to the demand;[c] but if the security is a mere licence to seize after-acquired property, it will be avoided by the bankruptcy.[d]

As an assignment of general future property operates merely as a contract to assign, if and when the property is acquired, an order of discharge in bankruptcy relieves the grantor from all liability under such a contract, and the mortgagee's remedy is by proof. Thus, where a bill of sale purported to assign all chattels which should subsequently be brought upon the grantor's premises, on his becoming bankrupt and obtaining his order of discharge, it was held that chattels afterwards brought by him upon the premises were not subject to the bill of sale, and that, so far, the security was avoided by the order of discharge, the contract to assign being a proveable liability within sec. 31 of the Bankruptcy Act, 1869. It seems doubtful, however, whether an order of discharge would bar an agreement to assign chattels specified so as to be identified.[e]

15. (1882.) The eighth and the twentieth sections

(a) R. S. C., 1883, lxi., 26, 27.
(b) Waterton *v.* Baker, 17 L. T. 494.
(c) Lyde *v.* Munn, 4 Sim. 505; 1 My. & K. 683
(d) Thompson *v.* Cohen, L. R. 7 Q. B. 527.
(e) Collyer *v.* Isaacs 19 Ch. D. 342.

Sec. 16. [1878.]

of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Repeal of part of Bills of Sale Act, 1878.

The amendment Act also repeals sec. 10, sub-sec. 1 [a] and a portion of sec. 16 of the principal Act. [b] Also the effect of sec. 8 of the amendment Act is practically to repeal sec. 4, clause 4, of the principal Act, so far as affects bills of sale within the amendment Act.

The repeal, however, appears by sec. 3 of the amendment Act to be limited to bills of sale given by way of security for the payment of money, and to leave the repealed sections in full force so far as regards bills of sale by way of absolute transfer, or given for any purpose other than to secure payment of money. [c]

The repeal of sec. 20 is not retrospective, and chattels comprised in a bill of sale duly registered before the commencement of the amendment Act are not within the reputed ownership clause of the Bankruptcy Act, 1869. [d]

The effect of the repeal of sec. 20 will be to bring within the operation of the reputed ownership clause of the Bankruptcy Act, 1869, chattels comprised in every bill of sale given to secure the payment of money, and registered under the amendment Act, which, after the 1st November, 1882, are in the reputed ownership of the grantor, being a trader, at the commencement of his bankruptcy or liquidation, with the consent of the mortgagee; but chattels comprised in bills of sale given by way of absolute transfer, and registered under the principal Act after the commencement of the amendment Act, are still within the protection of the repealed section. [e]

Office copies.

16. (1878.) Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy

(*a*) Sec. 10 [1882].
(*b*) Sec. 16 [1882].
(*c*) Swift *v.* Pannell, 31 W. R. 543.
(*d*) *Exp.* Izard, *re* Chapple, 23 Ch. D. 409.

of a registered bill of sale and affidavit,[a] purporting to be an office copy thereof, shall in all Courts, and before all arbitrators or other persons, be admitted as primâ facie evidence thereof, and of the fact and date of registration as shown thereon; . . . . such payment shall be made by a Judicature stamp.

Repealed in part, sec. 16, [1882].

The section alters the former practice as to proof of a bill of sale, and avoids the trouble and expense of calling an officer of the Queen's Bench Division.

Proof of bill of sale.

No affidavit or record of the Court shall be taken out of the Central Office without the order of a Judge or Master, and no subpœna for the production of any such document shall be issued.[b]

Under the repealed Acts, a certificate of registration of a document purporting to be a bill of sale, with the date and indorsement of the names of the parties, was no evidence that an affidavit satisfying all the requirements of the statute had been filed with the bill of sale.[c] Neither was a certificate of registration of "a document purporting to be a copy bill of sale together with an affidavit," sufficient evidence of the due filing of the bill of sale, unless there was also proof that the document registered was a true copy of the original bill of sale.[d]

Under the present system, office copies of all documents filed in the High Court shall be admissible in evidence in all causes and matters, and between all persons or parties, to the same extent as the original would be admissible;[e] and all copies, certificates, and other documents appearing to be sealed with a seal of the Central office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence; and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.[f]

By the Common Law Procedure Act, 1854,[g] it is not necessary to prove by the attesting witness any instrument to the validity of

(*a*) In the authorised copy of the statute this is printed, "any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof," but the above would seem to be the correct reading. See the section in Appendix.

(*b*) R. S. C., 1883, lxi. 28.

(*c*) Mason *v.* Wood, 1 C. P. D. 63; 24 W. R. 41; 45 L. J. C. P. 76; 33 L. T. 571.

(*d*) Halkett *v.* Emmott, 38 L. T. 508; 3 Q. B. D. 555; *s. n.* Emmott *v.* Marchant, 26 W. R. 632; 47 L. J. Q. B. 436; Grindell *v.* Brendon, 6 C. B. N. S. 698; Waddington *v.* Roberts, L. R. 3 Q. B. 579; 37 L. J. Q. B. 253; 9 B. & S. 697; 16 W. R. 1040; 18 L. T. 853.

(*e*) R. S. C., 1883, xxxvii. 4.

(*f*) R. S. C., 1883, lxi. 7.

(*g*) Sec. 26.

Sec. 16. [1882.]

which attestation is not requisite. Section 8 of the principal Act will render it necessary to prove by the attesting witness all unregistered bills of sale where the fact of execution is in issue; but if the bill of sale has been registered, an office copy of the affidavit by the attesting witness will, under the provisions of the section, be primâ facie proof of execution. The rule applies to a cancelled or burnt deed,(a) as also to one the execution of which is admitted by the party to it, even in open Court,(b) or in a subsequent agreement,(c) or in a sworn answer to interrogatories,(d) nor will illness excuse the attendance of an attesting witness.(e)

When it is unnecessary to call the attesting witness.

Where the instrument is thirty years old it proves itself; and if it is in the possession of the adverse party, who refuses to produce it pursuant to notice, or, if producing it, claims an interest under it in the subject-matter of the cause; (f) or where the document is tendered in evidence against a public officer who is bound by law to have procured its due execution, and who has dealt with it as a document duly executed; (g) it will be unnecessary to call the attesting witness; neither will the rule apply where the party, from physical or legal obstacles, is unable to produce the attesting witness —as, if the witness be dead, or insane, or out of the jurisdiction of the Court, or cannot be found, or if he be absent by collusion with the opposite party,(h) and if the instrument be lost and the name of the witness be unknown, the execution may be proved by other evidence.

Where an instrument, requiring attestation, is subscribed by several witnesses, it is only necessary to call one of them.(i)

Inspection of registered bills of sale.

16. (1882.) So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all

(a) Breton *v.* Cope, Pea. R. 44; Gillies *v.* Smither, 2 Stark. 528.

(b) R. *v.* Harringworth, 4 M. & S. 353; Johnson *v.* Mason, 1 Esp. 89.

(c) Doe *v.* Penfold, 8 C. & P. 536; *contra*, Bringloe *v.* Goodson, 5 Bing. N. C. 740.

(d) Call *v.* Dunning, 4 East. 53; Bowles *v.* Langworthy, 5 T. R. 366.

(e) Harrison *v.* Blades, 3 Camp. 357; *contra*, Jones *v.* Brewer, 4 Taunt. 46.

(f) Doe *v.* M. of Cleveland, 9 B. & C. 864.

(g) Plumer *v.* Brisco, 11 Q. B. 46; 12 Jur. 351; 17 L. J. Q. B. 158; Barnes *v.* Lucas, Ry. & M. 264.

(h) Currie *v.* Child, 3 Camp. 283; R. *v.* St. Giles, 1 E. & B. 642.

(i) Forster *v.* Forster, 33 L. J. P. & M. 113. The above epitome is taken from Mr. Taylor's valuable work on evidence, where the subject will be found fully discussed. 7th ed. 1530 *et seq.*

reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Searches.

By Order lxi., Rule 23, R. S. C., 1883, the registrar of bills of sale shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

Under a former rule, it was necessary, before inspecting the register, to satisfy the officer as to the object of the search.

Provision has been made by the Rules of the Supreme Court, December, 1882, for search, inspection, and office copies of abstracts filed in local registries,[a] and will be found in the notes to sec. 11 of the amendment Act.[b]

An official search for bills of sale may also be made under sec. 2 of the Conveyancing Act, 1882, and rules which will be found in Appendix A, Part i., p. 178.

The following additional fees for searches and inspection have been directed to be paid from the 1st of January, 1883:[c]—

For an official certificate of the result of a search in one name in any register or index under the custody of the registrar of bills of sale, if not not more than five folios	5s.
For every additional folio	6d.

(*a*) Rules 7, 8, December, 1882.
(*b*) P. 130.
(*c*) Order as to Court fees, December, 1882.

Sec. 17. [1878.]

For every additional name if included in the same certificate	2s.
For an office copy of the certificate of search, if not more than three folios	1s.
For every additional folio	6d.
For a continuation search, if made within one calendar month of date of official certificate (the result to be endorsed on such certificate)	1s.

The office hours of the bills of sale department of the Central Office are from ten to four, except on Saturday, and in vacation, when the offices close at two.

Debentures to which Act not to apply.

17. (1882.) Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated Company, and secured upon the capital stock or goods, chattels, and effects of such Company.

Under the principal Act, it has been held that want of registration does not avoid, as against the official liquidator of a Company, a debenture whereby the Company acknowledged its indebtedness in a principal sum, on which interest was to be paid, and for payment of principal and interest pledged to the debenture holder, rateably with holders of other debentures, amongst other things, certain personal chattels of the Company, which debenture, it was provided, should not be registered as a bill of sale.[a]

Affidavits.

17. (1878.) Every affidavit required by or for the purposes of this Act may be sworn before a Master of any division of the High Court of Justice, or before any Commissioner empowered to take affidavits in the Supreme Court of Judicature.[1]

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.[2]

(2) Page 143.

[1] Every affidavit shall be intituled in the cause or matter in which it is sworn, and shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party

(*a*) *Re* Asphaltic Wood Pavement Co., 49 L. T. 159

filing the same.[a] Every commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a Judge; and every such commissioner shall express the time when and the place where he shall do any other act incident to his office.[b] All affidavits, declarations, affirmations and attestations of honour, in causes or matters depending in the High Court, may be sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the Judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul or vice-consul, attached, appended or subscribed to any such affidavits, affirmations, attestations of honour, declarations, or to any other deed or document.[c] Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.[d] Every affidavit shall state the description and true place of abode of the deponent,[e] and if made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.[f] Affidavits.

The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.[g]

No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit; or, if taken at the Central Office, either by his initials or by the stamp of that office; nor

(a) R. S. C., 1883, xxxviii. 2, 3. (b) Rule 5. (c) Rule 6.
(d) Rule 7. (e) Rule 8. (f) Rule 9.
(g) Rule 11.

in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.(a)

Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to, and apparently perfectly understood by the deponent.(b)

Affidavits.

Every affidavit shall be filed in the Central Office,(c) and there shall be appended to it a note showing on whose behalf it is filed,(d) and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct; but the Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.(e) Affidavits used on applications in Court or at chambers respecting bills of sale are filed in each case under the name of the party by whom the bill of sale was given.

In cases in which, by the present practice, an original affidavit is allowed to be used, it shall, before it is used, be stamped with a proper filing stamp, and shall, at the time when it is used, be delivered to and left with the proper officer in Court or in chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.(f) Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used except by leave of the Court or a Judge.(g)

Formerly where an affidavit of execution made by the solicitor attesting a bill of sale was sworn by him before a commissioner, who was in partnership with him as a solicitor, it was held the affidavit was duly sworn;(h) but now no affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of

(a) R. S. C. 1883, Order xxxviii., Rule 12. (b) Rule 13.
(c) This does not apply to affidavits required to be filed in a District Registry.
(d) R. S. C., 1883, xxxviii., Rule 10. (e) Rule 14. (f) Rule 15.
(g) Rule 18. (h) Vernon *v.* Cooke, 49 L. J. C. P. 767.

such solicitor, or before the party himself;[a] and an affidavit which would be insufficient if sworn before the solicitor himself, shall be insufficient if sworn before his clerk or partner.[b]

(2) A false statement in an affidavit in non-judicial proceedings was formerly a misdemeanour at Common Law.[c] Perjury is punishable by penal servitude not exceeding seven years, or by imprisonment.

18. (1878.) There shall be paid and received in common law stamps the following fees, viz.: Fees.

On filing a bill of sale ... ... 2s.

On filing the affidavit of execution of a bill of sale ... ... 2s.

On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) ... ... 5s.

By an order of December, 1882, additional fees for searches and inspection have been directed to be paid from the 1st of January, 1883.[d]

The following duties are imposed on bills of sale by the Stamp Act, 1870,[e] and should be denoted by impressed stamps, to be calculated according to the amount or value of the consideration appearing on the face of the deed. Stamp duties.

An absolute bill of sale is a conveyance within the Stamp Acts, and is subject to a stamp duty upon the amount or value of the consideration for the sale as follows:—

Not exceeding £25 a duty of 6d. for every £5 or part of £5.							
Exceeding	25 and not exceeding £50				...	£0	5 0
,,	50	,,	,,	75	...	0	7 6
,,	75	,,	,,	100	...	0	10 0
,,	100	,,	,,	125	...	0	12 6
,,	125	,,	,,	150	...	0	15 0
,,	150	,,	,,	175	...	0	17 6
,,	175	,,	,,	200	...	1	0 0
,,	200	,,	,,	225	...	1	2 6
,,	225	,,	,,	250	...	1	5 0
,,	275	,,	,,	300	...	1	10 0
,,	300, then for every £50 and also for any fractional part of £50...					0	5 0

(a) R. S. C., 1883, Order xxxviii., Rule 16. (b) Rule 17.

(c) R. v. Hodgkiss, L. R. 1 C. C. R. 212; 39 L. J. M. C. 14; 11 Cox, 365; 18 W. R. 150; 21 L. T. 564.

(d) Note, sec. 16 [1882]. (e) 33 & 34 Vic. c. 97.

A conditional bill of sale, being a principal security for the payment of money, is to be stamped as follows:—

Stamp duties.

Not exceeding £25	£0	0	8
Exceeding 25 and not exceeding £50 ...	0	1	3
„ 50 „ „ 100 ...	0	2	6
„ 100 „ „ 150 ...	0	3	9
„ 150 „ „ 200 ...	£0	5	0
„ 200 „ „ 250 ...	0	6	3
„ 250 „ „ 300 ...	0	7	6
„ 300, for every £100, and also for any part of £100	0	2	6

If merely a collateral, auxiliary, additional, or substituted security, or by way of further assurance, where the principal or primary security is duly stamped:—

For every £100, and for any part of £100 secured, £0 0 6

A re-conveyance or release, or a transfer or assignment of a bill of sale, or of any money thereby secured, is subject to a duty of 6*d.* for every £100 or part of £100 of the amount transferred or assigned. If any further money is added to the amount already advanced, the instrument must be stamped as a principal security for such further money; for it would seem that a transfer of a bill of sale accompanied by a further advance is, for the purposes of the Stamp Act, a transfer of a bill of sale of the amount of the original advance, and a new security to the extent of the additional advance.[a]

The documents defined as bills of sale by sec. 4 of the principal Act will probably require to be so stamped; thus, an inventory with receipt attached, a receipt for the purchase-money of goods not in the ordinary course of business, or an agreement by which a right shall be conferred in equity to any personal chattels, or to any charge or security thereon, should, it would seem, now be stamped as a bill of sale.

A bill of sale to secure future advances, either with or without money previously due, is to be charged, when the total amount secured is in any way limited, with the same duty as a security for the amount so limited; but where such total amount is unlimited the security will only be available for the amount which the stamp thereon impressed extends to cover,[b] but it is usual to insert a proviso that the total principal moneys recoverable under the bill of sale shall not exceed a specified sum.

On an issue to try the property in goods, a previous bill of sale of the same goods, although cancelled, is not admissible, even to prove good faith, unless duly stamped;[c] but an unstamped bill of sale

(*a*) Wale *v.* Commissioners of Inland Revenue, 41 L. T. 166.
(*b*) Sec. 107, Stamp Act, 1870.
(*c*) Williams *v.* Gerry, 10 M. & W. 296; 11 L. J. Ex. 389.

may be given in evidence for the purpose of proving an act of bankruptcy.[a] Indeed, it appears that whenever a bill of sale is used, not to establish it, or set it up, but to destroy it altogether, it is, although unstamped, admissible in evidence.[b]

An authority to act under a bill of sale, as, for instance, an authority to sell, does not require a stamp.[c]

The following duties are imposed on every schedule or inventory or document of any kind whatsoever, referred to, in or by, and intended to be used or given in evidence as part of, or as material to, any other instrument charged with any duty, but which is separate and distinct from, and not indorsed on or annexed to such other instrument:

Where such other instrument is chargeable with any duty, not exceeding 10*s.*, then the same duty as such other instrument.

In any other case ... ... 10*s.*

An unstamped or insufficiently stamped bill of sale may be properly stamped on payment of the unpaid duty, a penalty of £10, and also, by way of further penalty, where the unpaid duty exceeds £10, of interest on such duty at the rate of £5 per cent. per annum from the date of execution of the bill of sale until such interest is equal in amount to the unpaid duty.[d]

Collection of fees.

19. (1878.) Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Order and disposition.

20. (1878.) Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

This section is repealed by sec. 15 of the amendment Act, but it has been held that the repeal is, by sec. 3 of that Act, limited to bills of sale given as security for the payment of money, and that bills of sale given by way of absolute transfer, and registered under the principal Act, are still within the protection of the section. Therefore, when an absolute bill of sale was given, after the com-

(*a*) Ponsford *v.* Walton, L. R. 3 C. P. 167; 37 L. J. C. P. 113; 16 W. R. 363.
(*b*) Coppock *v.* Bower, 4 M. & W. 361, per Lord Abinger, C.B.
(*c*) Barker *v.* Dale, 1 F. & F. 271. (*d*) Sec. 15; Bellamy *v.* Saull, 4 B. & S. 265; 32 L. J. Q. B. 366; 13 W. R. 867; 8 L. T. 534.

mencement of the amendment Act, and duly registered under the principal Act, it was held that the chattels it comprised could not be deemed to be in the possession, order, or disposition of the grantor, who had become bankrupt.(a)

Order and disposition.

As the amendment Act does not apply to any bill of sale duly registered before the commencement of the Act, unless the context otherwise requires,(b) the protection afforded by the section applies to chattels comprised in a bill of sale duly registered before the 1st of November, 1882, even though after that time they may, with the consent of the true owner, be in the reputed ownership of the grantor at the commencement of his bankruptcy.(c)

The section would, however, not protect a mortgagee whose bill of sale is unregistered or invalid from any cause where the doctrine of reputed ownership would otherwise have applied; but the protection of the section has been extended to cases where the grantor became bankrupt within the seven days allowed for registration, although the bill of sale was unregistered.(d)

Under the Bills of Sale Act, 1854, registration of a bill of sale did not take the goods it comprised out of the grantor's reputed ownership;(e) and the effect of the repeal will be to restore the former law, so far as regards bills of sale within the amendment Act.

By sec. 15, sub-sec. 5 of the Bankruptcy Act, 1869, the bankrupt's property comprises:—

> All goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.(f)

(a) Swift *v.* Pannell, 48 L. T. 351.

(b) Sec. 3 (1882).

(c) *Exp.* Izard, *re* Chapple, 23 Ch. D. 409.

(d) *Exp.* Kahen, *re* Hewer, 46 L. T. 856.

(e) Stansfield *v.* Cubitt, 27 L. J. Ch. 266; Badger *v.* Shaw, 2 E. & E. 472; 29 L. J. Q. B. 73; 8 W. R. 210; *Exp.* Harding, *re* Fairbrother, 15 Eq. 223; 42 L. J. Bank. 30; 28 L. T. 241.

(f) By the Bankruptcy Act, 1883, sec. 149 (2), where by any Act or instrument reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act; and by sec. 44 (3), the property of the bankrupt divisible amongst his creditors comprises all goods being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section. It will be observed that by the section the doctrine of reputed ownership is limited to trade goods.

Order and disposition.

The section does not apply to fixtures, whether landlord's, trade, or tenants, or to chattels affixed to and passing with the freehold, though separately assigned or charged, even such as might be sold as goods and chattels under an execution. But plant and trade utensils are within the Act. (a)

The commencement of the bankruptcy is defined by sec. 11 of the Bankruptcy Act, 1869, as the time of completion of the act of bankruptcy on which the order of adjudication is made, or the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication, provided that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition, which debt or debts still remain due at the time of the adjudication. The title of a trustee in liquidation, under sec. 125, sub-sec. 5 of the Bankruptcy Act, 1869, has a similar relation. (b) Under the Bankruptcy Act, 1883, sec. 43, the commencement of the bankruptcy will be at the time of the act of bankruptcy being committed on which a receiving order is made, or if more acts of bankruptcy than one are proved, at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the presentation of the bankruptcy petition.

Goods coming into the debtor's possession after the commencement of the bankruptcy are not within the section. (c) To bring the case within the section there must be reputed ownership, with possession, order, or disposition, by the consent of the true owner; for the section means that if goods are in a man's possession, order, or disposition, under such circumstances as to enable him by means of them to obtain false credit, then the owner of the goods who has permitted him to obtain that false credit is to suffer the penalty of losing his goods for the benefit of those who have given the credit. (d)

The doctrine of reputed ownership does not require any investigation into the actual state of knowledge or belief, either of all creditors, or of particular creditors, and still less of the outside world, who are no creditors at all, as to the position of particular goods. It is enough for the doctrine if the goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of

(a) Horn *v.* Baker, 2 S. L. Cases, 8th ed., 245.

(b) *Exp.* Duignan, *re* Bissell, L. R. 6 Ch. 605; 40 L. J. Bank. 68; 25 L. T. 286. 19 W. R. 1127; *Exp.* Eyles, *re* Edwards, 16 Eq. 99; 21 W. R. 574; 42 L. J; Bank. 55.

(c) Lyon *v.* Weldon, 2 Bing. 334; 9 Moo. 629.

(d) *Exp.* Wingfield, *re* Florence, 10 Ch. D. 594; 40 L. T. 15; 27 W. R. 340, per James, L. J.

those facts which are capable of being generally known to those who choose to make inquiry on the subject.

Order and disposition.

So, on the other hand, it is not at all necessary, in order to exclude the doctrine of reputed ownership, to show that every creditor, or any particular creditor, or the outside world who are not creditors, knew anything whatever about particular goods one way or the other, and it is enough if the situation of the goods was such as to exclude all legitimate ground from which those who knew anything about that situation could infer the ownership to be in the person having actual possession.(a)

The goods must be in the sole possession, order, or disposition of the bankrupt; thus the joint possession of the bankrupt and his partner is not sufficient; and where the agent of a bill of sale holder held possession with the bankrupt the section did not apply.(b)

With respect to goods of which the bankrupt was the original owner, as will usually be the case with chattels comprised in a bill of sale, the presumption is that his ownership continues whilst they remain in his possession, order, or disposition, and the onus is upon the person claiming the goods against the trustee to show that the bankrupt has ceased to be the reputed owner. When, however, the bankrupt was not the original owner of the goods, reputation of ownership must be proved by other circumstances.(c)

If a bill of sale holder permits the grantor to retain possession, the chattels will be subject to the section, whether possession be consistent with the deed or not;(d) and the possession may be actual or constructive; thus goods held by the agent or bailee of the bankrupt have been held to be in his reputed ownership.(e) Where the goods are held under a trust,(f) or notoriously (g) as factor or agent,(h) the section will not apply; and the reputation of ownership may be rebutted, by some custom proved to exist, either by reported cases or by evidence, and not of such a nature as necessarily to deceive, which the creditors of the debtor may be

(a) *Exp.* Watkins, *re* Couston, L. R. 8 Ch. 520; 42 L. J. Bank. 50; 21 W. R. 530; 28 L. T. 793.

(b) *Exp.* Dorman *re* Lake, L. R. 8 Ch. 51; 42 L. J. Bank. 20; Vicarino *v.* Hollingsworth, 20 L. T. 302; *Exp.* Fletcher, 8 Ch. D. 218.

(c) Lingard *v.* Messiter, 1 B. and C. 308.

(d) Freshney v. Carrick, 1 H. & N. 653; 26 L. J. Ex. 129; Spackman *v.* Miller, 12 C. B. N. S. 659; 9 Jur. N. S. 50; 31 L. J. C. P. 309.

(e) Knowles *v.* Horsfall, 5 B. & Ald. 134; Hervey *v.* Liddiard, 1 Stark, 123; Hornsby *v.* Miller, 1 E. & E. 192; 5 Jur. N. S. 938.

(f) Kitchen *v.* Ibbetson, 17 Eq. 46; 43 L. J. Ch. 52.

(g) *Exp.* Buck, *re* Fawcus, 3 Ch. D. 795; 34 L. T. 807.

(h) *Exp.* Boden, 28 L. T. 174; Mace *v.* Cadell, Cowp. 233; *Exp.* Bright, *re* Smith, 10 Ch. D. 566; 48 L. J. Bank. 81; 27 W. R. 385; 39 L. T. 649.

reasonably presumed to have known, for persons in the debtor's position to hold possession of the goods of others.(a)

Order and disposition.

Thus the custom of hotel keepers hiring furniture, or of the hire of pianos, has been so frequently proved, that the Courts will take judicial notice of it;(b) but it seems there is no such general custom of letting furniture on hire as to exclude the doctrine of reputed ownership;(c) and where the purchaser of furniture allowed the vendor to remain in possession at a rent, it was held to remain in his reputed ownership,(d) and so where the purchaser of furniture seized by the sheriff left it in the possession of the execution debtor, he agreeing to pay interest on the purchase-money.(e) A custom for persons to have the goods of others in their custody has been proved in the case, among others, of booksellers,(e) barge owners,(f) clockmakers,(g) coachbuilders,(h) farmers,(i) and wine merchants,(j) and where, according to the custom of the country, machinery and utensils of trade are included in a lease, as in the case of a colliery, possession by the lessee does not necessarily raise any reputation of ownership.(k)

Consent of the true owner.

The true owner's consent is a question of fact to be gathered from all the circumstances of the case;(l) and the onus of proving the consent of the true owner rests with the trustee.(m)

If before any act of bankruptcy the true owner demands, or endeavours to obtain possession of the goods, or does some act to determine his consent to the debtor's possession, this will prevent the application of the section.(n) Thus, if he seizes the goods, although the possession is friendly, and does not disturb the grantor's apparent possession, it will be sufficient;(o) and a mere

(a) *Exp.* Powell, *re* Matthews, 1 Ch. D. 501; 45 L. J. Bank. 100; 24 W. R. 378; 34 L. T. 234; *Exp.* Vaux, L. R. 9 Ch. 602; 43 L. J. Bank. 113; 22 W. R. 811; 30 L. T. 739; *Exp.* Emerson, 41 L. J. Bank. 20; Smith *v.* Hudson, 34 L. J. Q. B. 145; 13 W. R. 683; 12 L. T. 377; 11 Jur. N. S. 622.

(b) Crawcour *v.* Salter, 18 Ch. D. 30; *Exp.* Hattersley, *re* Blanshard, 8 Ch. D. 601; 47 L. J. Bank. 113; 38 L. T. 619; 26 W. R. 636.

(c) *Exp.* Brooks, *re* Fowler, 48 L. T. 453; 31 W. R. 833; 23 Ch. D. 261.

(d) *Exp.* Lovering, *re* Jones, L. R. 9 Ch. 621.

(e) Whitfield *v.* Brand, 16 M. & W. 282; 16 L. J. Ex. 103.

(f) Watson *v.* Peache, 1 Bing. N. C. 327.

(g) Hamilton *v.* Bell, 10 Exch. 545; 18 Jur. 1109; 24 L. J. Ex. 45.

(h) *Exp.* Wiggins, 2 D. & C. 269; M. & B. 168; Carruthers *v.* Payne, 5 Bing. 270; 2 M. & P. 429.

(i) Priestley *v.* Pratt, L. R. 2 Ex. 101.

(j) *Exp.* Watkins, 8 L. R. 8 Ch. 520; *Exp.* Vaux, L. R. 9 Ch. 602.

(k) Coombs *v.* Beaumont, 5 B. & Ad. 72.

(l) Load *v.* Green, 15 M. & W. 216; Prismall *v.* Lovegrove, 6 L. T. N. S. 229.

(m) *Exp.* Alexander, *re* Eslick, 4 Ch. D. 496.

(n) *Exp.* Montagu, 1 Ch. D. 556; 24 W. R. 309; 34 L. T. 197; Spackman *v* Miller, 12 C. B. N. S. 659.

(o) *Exp.* National Guardians Assurance Co., *re* Francis, 10 Ch. D. 408.

demand of possession, if made in good faith, will negative the consent of the true owner.(a) And even without any personal demand, the consent of the true owner was held to be withdrawn, his agents having made every effort, short of a forcible entry, to seize the goods in premises which had been closed. (b)

Consent of the true owner.

It appears that if the mortgagee, without notice of an act of bankruptcy committed by the grantor, available for adjudication, takes the goods out of his possession before adjudication, or endeavours to obtain them, or signifies his dissent to their remaining longer in the grantor's possession, the section will not apply, even where an act of bankruptcy has been committed; for although at the commencement of the bankruptcy the goods may have been in the bankrupt's reputed ownership, with the consent of the true owner, his taking possession of the goods will be a dealing protected by sec. 94, sub-sec. 3, of the Bankruptcy Act, 1869. A mere intention, however, to demand or take possession of the goods will not be sufficient, (c) nor will an attempt to dispose of them if they afterwards remain in bankrupt's possession. (d)

A creditor who receives notice of his debtor's intention to commit an act of bankruptcy is not bound to inquire whether the act has been committed, but is entitled to avail himself of his remedies just as if he had received no notice. Thus, where the holder of a bill of sale received notice that the debtor was about to file a liquidation petition, and at once sent to demand payment of the debt and take possession of the property comprised in the bill of sale, obtaining possession one day after the petition was filed, but having no notice that this had been done, it was held that the taking possession was a dealing with the debtor for valuable consideration within the protective clauses of the Bankruptcy Act, and that the section did not apply, notwithstanding the prior act of bankruptcy. (e)

Goods and chattels in the custody of the law will not be in the debtor's order or disposition; as where they are seized by the landlord under a distress for rent, (f) or by a receiver, (g) or by the sheriff under a lawful execution, (h) but where the seizure is wrongful the section will still apply. (i)

(a) *Exp.* Ward, *re* Couston, L. R. 8 Ch. 144; 42 L. J. Bank. 17; 21 W. R. 115; 27 L. T. 502; Smith *v.* Topping, 5 B. & Ad. 674; *Exp.* Jay, L. R. 9 Ch. 704, per Mellish, L. J.

(b) *Exp.* Cohen, *re* Sparke, 40 L. J. Bank. 14; 19 W. R. 126.

(c) Brewin *v.* Short, 5 E. & B. 227; 1 Jur. N. S. 798; 24 L. J. Q. B. 297; Graham *v.* Furber, 14 C. B. 134.

(d) Reynolds *v.* Hall, 4 H. & N. 519; 28 L. J. Ex. 257.

(e) *Exp.* Arnold, *re* Wright, 3 Ch. D. 70.

(f) Sacker *v.* Chidley, 13 W. R. 690; 11 Jur. 654.

(g) Taylor *v.* Eckersley, 5 Ch. D. 740.

(h) Fletcher *v.* Manning, 12 M. & W. 571; *Exp.* Foss, *re* Baldwin, 2 De G. & J. 230; 27 L. J. Bank. 17; 4 Jur. N. S. 522; *Exp.* Saffery, *re* Bremner, 16 Ch. D. 668.

(i) Barrow *v.* Bell, 5 E. & B. 540; 25 L. J. Q. B. 2; 20 Jur. 159; 4 W. R. 16; 26 L. T. O. S. 71; *Exp.* Edey, *re* Cuthbertson, 44 L. J. Bank. 55; 19 Eq. 264; 23 W. R. 519; 31 L. T. 851.

Choses in action, other than debts due to the bankrupt in the way of his trade, are exempted from the operation of sec. 15, sub-sec. 5, of the Bankruptcy Act, 1869, but it is prudent at once to give notice to the debtor, trustee, or other person from whom such chose in action is claimed; [a] and so where goods are in the custody or warehouse of a third person notice should be given, in order to complete the bill of sale holder's title.

The doctrine of reputed ownership has been here considered only in its application to bills of sale, and its principles will be found more fully discussed in treatises on bankruptcy law.

21. (1878.) Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875. Rules.

By sec. 68 of the Judicature Act, 1873, Her Majesty may, by the advice of the Lord Chancellor, the Lord Chief Justice of England and the other Judges, cause to be prepared rules of Court providing for the regulation of all matters consistent with or not expressly determined by the rules contained in the schedule thereto which, under and for the purposes of such last-mentioned rules, require to be or conveniently may be defined or regulated by further rules of Court, and generally for the regulation of any matters relating to practice and procedure of the Courts or to the duties of the officers thereof, or to the costs of proceeding therein, or to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively for which provision is not expressly made by the Act, or by the rules contained in the schedule thereto, and a majority of the Judges is empowered to alter or annul any rules of Court, or to make any new rules for the purpose of regulating such matters of practice or procedure, or otherwise as under the provisions of the Act may be regulated by rules of Court.

A further power of making rules is given by sec. 17 of the Judicature Act, 1875, and all rules made under the Acts are to be laid before each House of Parliament, and are subject to be annulled as by the Acts provided.

Certain rules have been issued in pursuance of the section, and will be found in Appendix A, Part i.

22. (1878.) When the time for registering a bill Time for registration.

(a) Ryall *v.* Rowles, 2 W. & T. L. Cases 29, 5th ed.; see 36 & 37 Vic. c. 66, sec. 25, sub-sec. 6.

Sec. 18. [1882.] of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

By R. S. C., 1883, Order lxiii., Rule 6, the several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter Week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving.

Repeal of Acts.

23. (1878.) From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed, the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

As the Bills of Sale Act, 1854, still regulates bills of sale executed before the commencement of this Act, and as many decisions turn on a construction of the words of its sections, it is printed in the Appendix.

Extent of Act.

18. (1882.) This Act shall not extend to Scotland or Ireland.

Extent of Act.

24. (1878.) This Act shall not extend to Scotland or to Ireland.

Bills of sale given and registered in Ireland are regulated by the Bills of Sale (Ireland) Act, 1879 (42 & 43 Vic. c. 50), and the Bills of Sale (Ireland) Act (1879) Amendment Act, 1883 (46 Vic. c. 7); cited together as the Bills of Sale (Ireland) Acts, 1879 and 1883.

SCHEDULES.

SCHEDULE A. [1878.]

Section 11

[*Affidavit on renewing Registration, see p.* 188.

SCHEDULE B. [1878.]

Section 12

[*Form of Register, see p.* 187.]

SCHEDULE . [1882.]

Section 9.

[*Form of Bill of Sale, see p.* 195.]

APPENDIX.

APPENDIX A.

Part I.

AN ACT

FOR

PREVENTING FRAUDS UPON CREDITORS BY SECRET BILLS OF SALE OF PERSONAL CHATTELS. (a)

(17 & 18 Vic. c. 36.)

[10*th July*, 1854.

WHEREAS frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors: for remedy whereof, be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Bills of Sale of personal chattels, or copies thereof, with affidavit of the time of making thereof, &c., to be filed with officer of Court of Queen's Bench within twenty-one days, otherwise the same shall be void as against assignees in bankruptcy, &c., and sheriffs, &c., seizing in execution any property comprised in any such bill, so far as regards any such property left in the possession of the person making the bill.

I. Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and Judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise

(a) Repealed, Bills of Sale Act, 1878, sec. 23.

such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all Sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any Court of law or equity authorising the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

Defeasance or condition of every bill of sale to be written on the same paper or parchment as the bill before it is filed.

II. If such bill of sale shall be made or given, subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

Officer to number bills of sale and keep books with lists therein.

III. The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number and the dates of the execution and filing of the same, and the sum for which

the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule to this Act,[a] which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of sixpence and no more; and that, in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of One shilling.

Officer to receive a fee of 1s. for filing every bill of sale and to account for the same to the Treasury, who shall have the same powers to account, &c., as under 13 & 14 Vic. c. 75.

IV. The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling and no more; and such officer shall render a like account to the Commissioners of Her Majesty's Treasury, and the said Commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of the fees received by him, as is provided by the seventy-fifth chapter of the statute passed in the thirteenth and fourteenth years of the reign of Her present Majesty with respect to the officers of the Court of Common Pleas therein mentioned.

Office copies or extracts of bills of sale to be given on payment as for copies of judgment.

V. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said Court of Queen's Bench.

Judge may order a memorandum of satisfaction to be written on any bill of sale or copy so filed.

VI. It shall be lawful for any judge of the said Court of Queen's Bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall

(a) By sec. 7 of the Bills of Sale Act, 1866 (29 & 30 Vic. c. 96), instead of the books directed to be kept by the section, there shall be kept at the said office one book only, in which shall be fairly inserted, as and when such bills of sale or copies as required by the principal Act, or affidavit of renewal as required by this Act, are respectively filed, the name, residence, and occupation of the person by whom the bill of sale was made or given, or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the said bill of sale was given, together with the number affixed to the said bill of sale or copy as directed by the principal Act, or by this Act (as the case may be), and the date of the said bill of sale or copy, and of the registration thereof, and the date of filing the said affidavit of renewal, and all such particulars shall be entered according to the form given in schedule "B" to this Act.

appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

Interpretation of terms.

VII. In construing this Act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; *India* warrants; warehouse keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any Government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

VIII. This Act shall not extend to *Scotland* or *Ireland*.

SCHEDULE.*

Name, &c., of the Person making or giving the Bill of Sale, or of the Person divested of Property.	Name, &c., of the Person to whom made or given.	Whether Bill of Sale, Assignment, Transfer, or what other Assurance, and whether absolute or conditional, and Number.	Date of Execution.	Date of Filing.	Sum for which made or given.	When and how payable.

THE BILLS OF SALE ACT, 1878.

(41 & 42 Vic. c. 31.)

AN ACT

TO

CONSOLIDATE AND AMEND THE LAW FOR PREVENTING FRAUDS UPON CREDITORS BY SECRET BILLS OF SALE OF PERSONAL CHATTELS.

[22*nd July*, 1878.

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Bills of Sale Act, 1878. Short Title.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy nine, which day is in this Act referred to as the commencement of this Act. Commencement.

* This form of Schedule was varied by Schedule (B) to the Bills of Sale Act, 1866.

Application of Act.

3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction (that is to say),

Interpretation of terms.

The expression "bill of sale" shall include bills of sales, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, not any stock or produce upon any farm or lands which by virtue

of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed" means prescribed by rules made under the provisions of this Act.

Application of Act to trade machinery.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a.*) In or incidental to the making any article or part of an article; or

(*b.*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c.*) In or incidental to the adapting for sale any article.

Certain instruments

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be

giving powers of distress to be subject to this Act.

given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

Avoidance of unregistered bills of sale in certain cases.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such

seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be). [a]

Avoidance of certain duplicate bills of sale.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Mode of registering bills of sale.

10. A bill of sale shall be attested and registered under this Act in the following manner:—

(1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor: [b]

(2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed:

(3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the

(*a*) Repealed, Bills of Sale Act (1878) Amendment Act, 1882, sec. 15.
(*b*) *Ib.*, sec. 10.

body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

Renewal of registration.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

Form of register. The Registrar.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second Schedule (B) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the resspective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy

originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The Registrar.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar. 36 & 37 Vic. c. 66. 31 & 39 Vic. c. 77.

Rectification of register.

14. Any Judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration, on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

Entry of satisfaction.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

Copies may be taken, &c.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, of registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting ot be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *primâ facie* evidence thereof and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected;[a] such payment shall be made by a judicature stamp.

(*a*) Repealed in part, Bills of Sale Act (1878) Amendment Act, 1882, sec. 16.

Affidavits.

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court or Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

Fees.

18. There shall be paid and received in common law stamps the following fees, viz.:

On filing a bill of sale	2*s*.
On filing the affidavit of execution of a bill of sale	2*s*.
On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing)	5*s*.

Collection of fees under 38 & 39 Vic. c. 77, s. 62.

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Order and disposition.

32 & 33 Vic. c. 71.

20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.[a]

Rules.

36 & 37 Vic. c. 66. 38 & 39 Vic. c. 77.

21. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Time for registration.

22. When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Repeal of Acts. 17 & 18 Vic. c. 36. 29 & 30 Vic. c. 96.

23. From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be repealed: Provided that (except as is herein expressly mentioned with respect to construction and with respect to renewal of registration) nothing in this Act shall affect any bill of sale executed before the commencement of this Act, and as regards bills of sale so executed the Acts hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

Extent of Act.

24. This Act shall not extend to Scotland or to Ireland.

(*a*) Repealed, Bills of Sale Act (1878) Amendment Act, 1882, sec. 15.

SCHEDULES.

SCHEDULE A.

Section 11.

I [*A.B.*] of do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day 18 [*insert date of registration*], is still a subsisting security.

Sworn, *&c.*

SCHEDULE B.

Section 12.

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

THE BILLS OF SALE ACT (1878) AMENDMENT ACT, 1882.

(45 & 46 Vic. c. 43.)

AN ACT

TO

AMEND THE BILLS OF SALE ACT, 1878.

[18*th August*, 1882.

41 & 42 Vic. c. 31.

WHEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commencement of Act.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

Construction of Act. 41 & 42 Vic. c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall, not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

Bill of sale to have schedule of property attached thereto.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and

shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

Bill of sale not to affect after-acquired property.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

Exception as to certain things.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say),

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale with power to seize except in certain events to be void.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law :

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a Judge thereof in chambers, and such court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists,

may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Bill of sale to be void unless attested and registered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

Form of bill of sale.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

Attestation.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Local registration of contents of bills of sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars, to each such registrar.

32 & 33 Vic. c. 71, s. 60.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

Bill of sale under 30*l.* to be void.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

Chattels not to be removed or sold.

13. All personal chattels seized, or of which possession is taken after the commencement of this Act, under or by virtue of any bill

of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

Bill of sale not to protect chattels against poor and parochial rates.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

Repeal of part of Bills of Sale Act, 1878.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

Inspection of registered bills of sale.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided, that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Debentures to which Act not to apply.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of Act.

18. This Act shall not extend to Scotland or Ireland.

SCHEDULE.

Form of Bill of Sale.

This Indenture made the day of between *A. B.* of of the one part, and *C. D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.,

Signed and sealed by the said *A. B.* in the presence of me *E. F.* . [*add witness's name, address, and description*].

RULES OF THE SUPREME COURT, 1883.

THE following Orders and Rules may be cited as "The Rules of the Supreme Court, 1883." They shall come into operation on the Twenty-fourth day of October, 1883, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

The Orders and Rules mentioned in Appendix O hereto are hereby annulled, and the following Orders and Rules shall stand in lieu thereof.(a)

ORDER LXI.

CENTRAL OFFICE.

1. The Central Office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business of the Office shall be distributed among the departments in accordance with that scheme, and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

Scheme.

Name of Department.	Business.
* * *	* * * * * * *
7. Bills of sale... ...	The registry of bills of sale, and other duties connected therewith.
* * *	* * * * * * *

7. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

17. Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required; and such indexes

(a) The Schedule annuls nearly all Orders and Rules issued since the Judicature Acts, including the Rules of April and May, 1880.

or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee.

18. There shall also be entered in proper books kept for the purpose the time when any certificate is delivered at the Central Office to be filed, with the name of the cause and the date of the certificate; and the like entry shall be made of the time of delivery of every other document filed at the Central Office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.

19. Every judgment, order, certificate, petition or document made, presented or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the Central Office.

23. The clerk of enrolments and each of the following registrars, namely the registrar of bills of sale, the registrar of certificates of acknowledgments of deeds by married women, and the registrar of judgments shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.[a]

24. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the proper officer shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Central Office.

25. The masters shall execute the office of the registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Act (1878) Amendment Act, 1882, and any one of the masters may perform all or any of the duties of the registrar.

26. A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale, on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the Central Office.[b]

27. Where the consent in the last preceding Rule mentioned cannot be obtained, the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt

(a) Form of Search, p. 187.
(b) Form of consent and affidavit, pp. 188, 189.

(if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.[a]

28. No affidavit or record of the Court shall be taken out of the Central Office without the order of a Judge or master, and no subpœna for the production of any such document shall be issued.

29. Any officer of the Central Office, being required to attend with any record or document at any assizes or at any court or place out of the Royal Courts of Justice, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges and expenses in respect of such attendance, and undertake to pay any further just fees, charges and expenses which may not be fully answered by such deposit.

RULES OF THE SUPREME COURT.

December, 1882.

1. These Rules may be cited as "The Rules of the Supreme Court, December, 1882," or each separate Rule may be cited as if it had been one of the Rules of the Supreme Court, and had been numbered by the number of the Order and Rule mentioned in the margin.

2. These Rules shall come into operation on the 1st January, 1883.

ORDER LXb.

Local Registration of Bills of Sale.

3. *Rule 1. Abstract.*—The abstract of the contents of a Bill of Sale, required by the Bills of Sale Act (1878) amendment Act, 1882, to be sent to the Registrar of a County Court, shall be in the form given in the Schedule hereto.

4. *Rule 2. Abstract to be sealed and dated.*—The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and dated on the day on which it is sent by post to the Registrar of the County Court named therein.

5. *Rule 3. Abstracts to be numbered and filed.*—The Registrar shall number the abstracts in the order in which they shall be received by him, and shall file and keep them in his office.

6. *Rule 4. Index how to be kept.*—The Registrar shall keep an index, alphabetically arranged, in which he shall enter under

(a) Form of Summons, p. 189.

the first letters of the surname of the mortgagor or assignor such surname, with his Christian name or names, address, and description, and the number which he has affixed to the abstract.

7. *Rule* 5. *Search and inspection of abstract.* — The Registrar shall allow any person to search the index at any time during which he is required by the County Court Rules for the time being to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract upon payment of one shilling for each abstract inspected.

8. *Rule* 6. *Office copy of abstract.* — The Registrar shall also, if required, cause an office copy to be made of any abstract, and shall be entitled for making, marking, and sealing the same to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

SCHEDULE.

[*Abstract of Bill of Sale for Local Registration, see p.* 190.]

RULES UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882. [a]

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to sec. 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms 1 and 2 in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the

(*a*) Section 2 of the Conveyancing Act, 1882 (45 & 46 Vic. c. 39), so far as it is applicable to bills of sale, is as follows:—(1.) Where any person requires, for purposes of this section, search to be made in the central office for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act, he may deliver in the office a requisition in that behalf, referring to this section. (2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate. (3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be. (4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section. (5.) General rules shall be made for the purposes of

officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under sec. 2 of the Conveyancing Act, 1882, shall be in the Forms 3 to 4 in the Appendix, and the certificates of the results of such searches shall be in the Forms 7 to 10, with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form 11 in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form 12 in the Appendix, with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

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this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein . . . . (6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour. (7.) Nothing in this section or in any rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such rule had not been enacted or made. (8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate. (9.) Where a solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable. (10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

APPENDIX A.

Part II.

No. 1.

Affidavit on Registration of Bill of Sale.[a]

18 . No.

In the High Court of Justice.

Queen's Bench Division.

I, of

make oath and say as follows :—

1. The paper writing hereto annexed and marked "A." is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 , and I duly attested his execution thereof.

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a , and reside at

Sworn at
the day of
18
Before me,

This affidavit is filed on behalf of

(a) The form given in App. B, R. S. C. 1883, appears to apply only to bills of sale under the principal Act. It is No. 3 in this Appendix.

No. 2.

Affidavit on Registration of Bill of Sale with two Attesting Witnesses.

18 .— .—No .

In the High Court of Justice.
QUEEN'S BENCH DIVISION.

I, of
make oath and say as follows:—

1. The paper writing hereto annexed marked "A" is a true copy of a bill of sale, and of every schedule or inventory thereto annexed, or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day it bears date, being the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The names and subscribed to the said bill of sale as that of the witnesses attesting the due execution thereof, are respectively of the proper handwriting of me, this deponent, and of the said and the said was present and saw the execution of the said bill of sale and the same was duly attested by the said and by me, this deponent.

6. I reside at and am a and the said resides at and is a

7. The said and I, this deponent, are the only attesting witnesses to the said bill of sale.

Sworn at
the day of
18
Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

This affidavit is filed on behalf of

No. 3.

Affidavit on Registration of Bill of Sale, given otherwise than to secure payment of money. [a]

(Rules of Supreme Court, 1883, Appendix B, 24.)

18 .— .—No. .

In the High Court of Justice.

DIVISION.

I, of

make oath and say as follows:—

1. The paper writing hereto annexed and marked "A" is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a Solicitor of the Supreme Court, and reside at

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn at
the day of
18 ,

Before me,

This affidavit is filed on behalf of

(a) Bills of sale given otherwise than as security appear still to be regulated by the principal Act, and to require attestation by a Solicitor. The above form is given in the Appendix to R. S. C., 1883, as an affidavit on registration of bill of sale, but clearly applies only to bills of sale under the principal Act.

No. 4.

Affidavit on Registration of Bill of Sale, given otherwise than to secure payment of money, with two Attesting Witnesses, one not being a Solicitor.

18 .— .—No. .

In the High Court of Justice.

DIVISION.

I, of
make oath and say as follows:—

1. The paper writing hereto annexed, marked "A," is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by

2. The said bill of sale was made and given by the said on the day it bears date, being the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The said bill of sale was executed in the presence of the attesting Solicitor, and was by him duly attested, and the said did, before its execution by the said , explain to him the effect thereof.

6. The names and subscribed to the said bill of sale as that of the witnesses attesting the due execution thereof, are respectively of the proper handwriting of me, this deponent, and of the said

7. I reside at and am a and the said resides at and is a Solicitor of the Supreme Court of Judicature.

8. The said and I, this deponent, are the only attesting witnesses to the said bill of sale.

Sworn at)
the day of (
18)

Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

This affidavit is filed on behalf of

No. 5.

Affidavit of Execution of an absolute Bill of Sale, by way of Inventory and Receipt, under Process.

18 .— .—No. .

In the High Court of Justice.

DIVISION.

I, of

make oath and say as follows :—

1. The paper writing marked "A," hereto annexed, is a true copy of an inventory of goods, with a receipt thereto attached, and of every attestation of the execution thereof, being a bill of sale made and given and executed by the [bailiff] of * to of .

2. The said bill of sale was made and given and executed by the said [bailiff] on the day of , 18 , under and by virtue of a writ of fieri facias issued out of the said * on the day of directed to the said [bailiff] to levy a sum of upon the goods and chattels of

3. The said resides at and is

4. I was present and saw the said duly execute the said bill of sale, on the said day of 18 , and I duly attested his execution thereof.

5. The name , subscribed to the said bill of sale, as the witness attesting the due execution thereof, is in the proper handwriting of the deponent.

6. I am a Solicitor of the Supreme Court, and reside at

7. Before the execution of the said bill of sale by the said , I explained to the nature and effect thereof.

Sworn at
the day of
18 ,

Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

This affidavit is filed on behalf of

* Court from which process issued.

No. 6.

Declaration by Grantor against Incumbrances.

I, of
do solemnly and sincerely declare that I am not a bankrupt or liquidating debtor, and have not done or committed any act, matter, or thing, whereby or whereupon I am liable to be adjudicated a bankrupt, nor have I assigned my estate for the benefit of my creditors, nor have I conveyed, assigned, or charged the dwelling-house and premises aforesaid or any part thereof, and there are no judgments, executions, or incumbrances of any kind affecting the chattels and things specifically described in the schedule or inventory now produced to me marked "A," which said chattels and things I have this day by a deed or bill of sale bearing even date herewith, assigned to for securing to him the repayment of and interest thereon. And I further declare that at the time of the execution of the said bill of sale I was the true owner of all and every the said chattels and things, and that the same then were my own and absolute property, and that I then had in myself good right, full power, and lawful and absolute authority to assign the same to the said
his executors, administrators and assigns in manner aforesaid, free from incumbrances. And further that all rent, rates and taxes in respect of the dwelling-house and premises aforesaid have been fully paid to the day of now last past. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared and subscribed at
in the of this
day of , in the year of our
Lord 18 ,
Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

No. 7.

Form of Register.[a]

Satisfaction entered.	No.	By whom given (or against whom process issued).			To whom given.	Nature of instrument.	Date.	Date of registration.	Date of registration of affidavit of renewal.
		Name.	Residence.	Occupation.					

No. 8.

Search.[b]

18 .— .—No.

In the High Court of Justice.

QUEEN'S BENCH DIVISION.

v.

Search for

Dated the day of 18 .

(Signed)

(Address)

Agent for Solicitor for

(a) Schedule B, Bills of Sale Act, 1878.

(b) R. S. C. 1883, App. G, No. 27.

No. 9.

Affidavit on renewing Registration.[a]

I [*A. B.*] of do swear that a bill of sale, bearing date the day of 18 [*insert the date of the bill*], and made between [*insert the names and descriptions of the parties in the original bill of sale*], and which said bill of sale [*or*, and a copy of which said bill of sale, *as the case may be*] was registered on the day 18 [*insert date of registration*], is still a subsisting security.

Sworn, *&c.*

(*a*) Schedule A, Bills of Sale Act, 1878.

Nos. 10 & 11.

Affidavit for Order to enter Memorandum of Satisfaction.

18 .— .—No. .

In the High Court of Justice.

QUEEN'S BENCH DIVISION.

I, of make oath and say as follows:—

1. On the day of 18 , I was present and saw of sign the consent hereunto annexed marked "A" to an order that a Memorandum of Satisfaction should be written upon the registered copy of a bill of sale dated the day of 18 , and made between of and of the debt for which such bill of sale was made or given having been satisfied or discharged.

2. The name signed to the said consent is in the proper handwriting of the said who is the same person as mentioned in the said bill of sale.

3. The name set and subscribed as witness to the signature of the said is in the proper handwriting of me this deponent.

4. I am a and reside at

Sworn at
the day of
18 ,

Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

Filed on behalf of

Consent to Memorandum of Satisfaction.

I, of being the person entitled to the benefit of a bill of sale bearing date the day of 18 , and made between of the one part, and of the other part, and given for securing the sum of £ a copy of which said bill of sale was registered on the day of do hereby certify and declare that all moneys secured by or due and owing in respect of the said bill of sale are fully paid and satisfied, and I hereby consent to an order that a memorandum of satisfaction be written upon such registered copy of the said bill of sale.

Dated the day of

Signed in the presence of

No. 12.

Summons for Entry of Satisfaction on a Registered Bill of Sale.[a]

In the High Court of Justice.

In the matter of a bill of sale by to dated the day of 18 , and registered on the day of 18 .

Let all parties concerned attend the Registrar of Bills of Sale at the Central Office, Royal Courts of Justice, London, on the day of 18 , at o'clock in the noon, on the hearing of an application on the part of that satisfaction be entered on the above-mentioned bill of sale.

Dated the day of 18 .

This summons was taken out by of

To

(*a*) R. S. C., 1883, Appendix K, No. 58.

No. 13.

Abstract of Bill of Sale for Local Registration.[b]

Mortgagor or Assignor.	Residence and Occupation.	Mortgagee or Assignee.	Nature of Instrument and Consideration.	Nature of Property assigned.	Amount secured and how repayable.	Rate of Interest.	Date of Instrument.	Date of Registration.

*To the Registrar of the County Court of*_____ *Sent on the day of* 188 .

L.S.

*holden at*_____

(*b*) Schedule R. S. C., December, 1882.

No. 14.

FORM II.[a]

Declaration as to Purposes of Search contained in the Requisition.

I declare that the above-mentioned search is required for the purposes of a sale [*or* mortgage, *or* lease, *or as the case may be*], by *A. B.* to *C. D.*

No. 15.

FORM IV.[a]

Requisition for Search in the Bills of Sale Department under the Conveyancing Act, 1882, *sec.* 2.

Supreme Court of Judicature.

CENTRAL OFFICE.

REQUISITION FOR SEARCH.

To the Registrar of Bills of Sale,
Royal Courts of Justice, London.

In the matter of *A. B.* and *C. D.*

Pursuant to sec. 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 both inclusive, in the following name [*or* names].

Surname.	Christian Name or Names.	Usual or last-known place of abode.	Title, Trade, or Profession.

[*Add declaration, Form II.*]

[*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*]

Signature, address, and description of person requiring the search

Dated

(*a*) App. to Rules under sec. 2, Conveyancing Act, 1882.

No. 16.

FORM VIII.[a]

Certificate of Search by the Registrar of Bills of Sale, under the Conveyancing Act, 1882.

Supreme Court of Judicature.

CENTRAL OFFICE,

Bills of Sale Department.

CERTIFICATE OF SEARCH PURSUANT TO SEC. 2 OF THE CONVEYANCING ACT, 1882.

In the matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name [*or* names] of for the period from 18 18 both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name [*or* in any one or more of those names] during that period,

or, and that except the described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name [*or* in any one or more of those names] during the period aforesaid.

THE SCHEDULE.

Dated .

No. 17.

FORM XI. [a]

Requisition for Continuation of Search under the Conveyancing Act, 1882.

Supreme Court of Judicature,

CENTRAL OFFICE.

Requisition for continuation of Search.

To the Clerk of Enrolments
or *The Registrar of Royal Courts of Justice, London, W.C.*

In the matter of *A. B.* and *C. D.*

Pursuant to sec. 2 of the Conveyancing Act, 1882, continue the search for [ ], made pursuant to the requisition dated the day of 18 , in the name [*or* names] of from the day of to the day of 18 , both inclusive.

Signature, address, and description of person requiring the search

Dated .

(*a*) App. to Rules under sec. 2, Conveyancing Act, 1882.

No. 18.

FORM XII. [a]

Certificate of Result of Continued Search under the Conveyancing Act, 1882, *s.* 2, *to be indorsed on Original Certificate.*

This is to certify that the search [*or* searches] mentioned in the within written certificate has [*or* have] been diligently continued to the day of 18 , and that up to and including that date [except the mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, *or* no instrument has been registered, or re-registered, as a bill of sale, *or* no certificate has been filed, *or* no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognisance, Crown bond, inquisition, acceptance of office, execution or annuity, has been registered or re-registered in the within-mentioned name [*or* in any one or more of the within-mentioned names].

Dated .

(*a*) App. to Rules under sec. 2, Conveyancing Act, 1882.

APPENDIX A.

PART III.

No. I.

Statutory Form of Bill of Sale. [a]

This Indenture made the day of between *A. B.* of of the one part, and *C. D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.* [*add witness's name, address, and description*].

(*a*) Schedule, Bills of Sale Act (1878) amendment Act, 1882.

No. 2.

Absolute Bill of Sale. (a)

This Indenture made the day of
One thousand eight hundred and
Between
of the one part and
of the other part Whereas the said
has agreed with the said
for the absolute sale to him of the
and effects specified in the schedule hereunder written or hereunto annexed at or for the price or sum of

Now this indenture witnesseth that in pursuance of the said agreement and in consideration of the said sum of
to the
said paid by the said
on or immediately
before the execution of these presents (the receipt of which said sum he the said hereby
acknowledges) he the said
doth by these presents grant sell and assign unto the said
his executors administrators
and assigns all and singular the said
and effects And all the right title interest property claim and demand whatsoever of him the said
of in and to the said premises and
every or any of them respectively To have and to hold all and singular the said and effects
with their appurtenances unto the said
his executors administrators and assigns for his and their own absolute use and benefit without any let suit hindrance disturbance claim or demand whatsoever of from or by any person or persons whomsoever And the said
doth hereby for himself his heirs executors and administrators covenant with the said
his executors administrators and assigns
that he the said now hath
good title and power to grant and assign the said premises and every of them unto the said his
executors administrators and assigns in manner aforesaid free from incumbrances And that he the said

(a) Absolute bills of sale would appear to be still governed by the principal Act, and to require attestation and registration. If given to secure the payment of money, though absolute in form, they will be void, as an infringement of sec. 9 of the amendment Act.

and all persons claiming under him shall and will from time to time and at all times hereafter warrant and defend all and singular the said premises unto the said his executors administrators and assigns against all persons whomsoever and of which and effects the said hath this day put the said into actual possession by delivering unto him a in the name of the whole thereof.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered by the said in my presence the effect of the above-written bill of sale having been explained to the said before his execution thereof by me the attesting solicitor

Received the day and year first above written of and from the above-named the sum of being the consideration money above expressed to be paid by him to me £

Witness

THE SCHEDULE HEREINBEFORE REFERRED TO.

No. 3.

Bill of Sale—Concise Form.

This Indenture made the day of One thousand eight hundred and Between of of the one part and of of the other part Witnesseth that in consideration of the sum of £ now paid to by the receipt of which the said hereby acknowledges he the said doth hereby assign unto his executors administrators and assigns

all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ and interest thereon at the rate of per cent. per annum And the said doth agree and declare that he will duly pay to the said the principal sum aforesaid together with the interest then due by equal payments of £ on the day of and the day of And the said doth also agree with the said that he will at all times during the continuance of this security insure and keep the said chattels and things insured against loss or damage by fire in the sum of pounds at the least And also will pay all rent to become due and payable in respect of the premises on which the said chattels and things or any of them now are Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said for any cause other than those specified in section seven of the Bills of Sale Act (1878) amendment Act 1882 In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

[*Add witness's name, address and description.*] Signed and sealed by the said in the presence of me

THE SCHEDULE ABOVE REFERRED TO.

No. 4.

Bill of Sale—Concise Form, with Power of Sale.

This Indenture made the day of . One thousand eight hundred and Between of of the one part and of of the other part Witnesseth that in consideration of the sum of £ now paid to by the receipt of which the said hereby acknowledges he the said doth hereby assign unto his executors administrators and assigns all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ and interest thereon at the rate of per cent. per annum And the said doth agree and declare that he will duly pay to the said the principal sum aforesaid

together with the interest then due by equal payments of £ on the day of and the day of And the said doth also agree with the said that he will at all times during the continuance of this security insure and keep the said chattels and things insured against loss or damage by fire in the sum of £ at the least and will apply the moneys to be received by virtue of any such insurance in payment to the said of the principal sum aforesaid or so much thereof as may then remain unpaid together with the interest then due (a) And also will punctually pay all rent rates and taxes to become due and payable in respect of the premises on which the said chattels and things or any of them are or shall be And will upon demand in writing by the said produce to him the last receipts for rent rates and taxes of him the said And that he the said now has power to assign all and singular the said chattels and things unto the said his executors administrators and assigns in manner aforesaid free from incumbrances And further that he the said and every other person claiming by or through him any interest in the said chattels and things or any of them will at all times (at the cost until seizure or sale of the said and afterwards of the person or persons requiring the same) execute and do all such assurances and things for the further or better assuring all or any of the said chattels and things unto the said his executors administrators and assigns and enabling him and them to obtain possession of and quietly enjoy the same as by him or them shall be reasonably required. And it is hereby agreed and declared that in case the said shall make default in payment of the principal sum aforesaid or any part thereof or the interest thereon at the times hereinbefore provided for payment or in the performance of any covenant or agreement herein contained and necessary for maintaining this security or if he shall become a bankrupt or suffer the said chattels and things or any of them to be distrained for rent rates or taxes or if he shall fraudulently either remove or suffer the said chattels and things or any of them to be removed from the premises on which the same are or shall be or if he shall not without reasonable excuse upon demand in writing by the said produce to him the last receipts of the said or rent rates and taxes or if execution shall have been levied against the goods of the said under any judgment at law it shall be lawful

(a) Where a bill of sale contained a covenant to insure, but no provision for application of the policy moneys in case of fire, the mortgagees were held to have no claim to the benefit of the policy. (Lees *v.* Whiteley, 2 Eq. 143; 35 L. J. Ch. 142.)

for the said his servants or agents to enter into and upon the premises on which the said chattels and things or any of them are or shall be and to seize and take possession of the whole or any part thereof and after the expiration of five clear days from the day of so seizing or taking possession to remove sell and dispose of the same or any of them for such price or prices as can reasonably be obtained and either by public auction or private contract and out of the sale moneys to retain the principal sum aforesaid or so much thereof as may for the time being remain unpaid and the interest then due together with all costs and expenses incurred in relation to this security and shall pay the surplus if any to the said

And upon any such sale the purchaser shall not be bound to see or inquire whether any such default has been made as aforesaid And it is hereby declared and agreed that this assignment shall be void if the principal sum aforesaid with the interest thereon shall be paid to the said his executors administrators or assigns at the times and in manner aforesaid Provided always that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said for any cause other than those specified in section seven of the Bills of Sale Act (1878) amendment Act 1882 In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

[Add witness's name, address and description.]

Signed and sealed by the said
in the presence of me

Received the day and year first before written of and from the said
the sum of
being the consideration money hereinbefore expressed to be paid by him to me.
£

Witness

THE SCHEDULE ABOVE REFERRED TO.

No. 5.

Bill of Sale with full Covenants.

This Indenture made the day of
One thousand eight hundred and
Between
(hereinafter called the mortgagor) of the one part and
(hereinafter called the mortgagee) of the other part witnesseth that in consideration

of the sum of now due and owing by the mortgagor to the mortgagee for and also of the sum of [*Money lent, or the case may be.* now paid to the mortgagor by the mortgagee (the receipt of which said sum the mortgagor hereby acknowledges) he the mortgagor doth hereby assign unto the mortgagee all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of and interest thereon at the rate of per cent. per annum And the mortgagor doth agree and declare that he will duly pay to the mortgagee the principal sum aforesaid together with the interest then due immediately on demand thereof in writing made or given to the mortgagor or left at his last known place of abode in England by the mortgagee and will so long as the principal sum aforesaid or any part thereof shall remain unpaid pay to the mortgagee interest thereon or upon so much thereof as may for the time being remain unpaid after the rate aforesaid on the day of and the day of in every year and will if the principal sum aforesaid or any part thereof shall be paid at any time other than the said days appointed for payment of interest pay interest thereon up to the time of such payment[a] And will during the continuance of this security punctually pay and discharge all rent taxes rates and outgoings to become due and payable in respect of the premises on which the said chattels and things or any of them are or shall be And will upon demand in writing by the mortgagee produce to him the last receipts for such payments respectively And that the mortgagor will not remove or suffer to be removed the said chattels and things or any of them from the said premises wherein the same are or shall be without the previous consent in writing of the mortgagee And will preserve and keep the said chattels and things whole safe and uninjured reasonable use thereof only excepted And that it shall be lawful for the mortgagee his servants or agents at all reasonable times to enter the premises in or about which the said chattels or things or any of them are or shall be to search and see that the same respectively are safe and uninjured and that the mortgagor will upon request pay to the mortgagee the

(*a*) A covenant to this effect is necessary where the rate of interest exceeds five per cent., for in the absence of a covenant to pay interest on the principal sum, or any part of it remaining unpaid after the day named for repayment, interest is recoverable only as damages, and will be limited to five per cent. (Goodchap *v.* Roberts, 14 Ch. D. 49; 42 L. T. 666; 28 W. R. 870.) There may also be added a covenant that interest in arrear shall be capitalised at half-yearly rests, the bill of sale thus becoming a security for compound interest for the period for which interest is in arrear. (Clarkson *v.* Henderson 28 W. R. 907; 49 L. J. Ch. 289; 43 L. T. 29.)

value of any of the said chattels and things upon any such inspection found to be damaged or worn out And will during the continuance of this security keep the said chattels and things insured against loss or damage by fire in the sum of

at the least and will on demand in writing by the mortgagee produce the policy and the receipt for the current premium for such insurance and will apply or at the option of the mortgagee permit him to receive and apply all moneys received by virtue of any such insurance in payment to the mortgagee of the principal sum aforesaid or so much thereof as may then remain unpaid together with the interest then due And the mortgagor doth further agree and declare that he is the true owner of all and singular the said chattels and things and has lawful power and authority to assign the same in manner aforesaid free from incumbrances And that he the mortgagor and all persons claiming under him will at his own cost at all times make do and execute all acts deeds and things for further or better securing all and singular the said chattels and things unto the mortgagee and enabling him to obtain or retain and quietly possess and enjoy the same as he may require And that if the mortgagor shall neglect to pay any rent taxes rates or outgoings hereby agreed to be paid or to effect or to continue the insurance of the said chattels and things or to produce to the mortgagee the receipts for any rent taxes rates or outgoings as aforesaid or the said policy of insurance or the receipts for the premiums thereon when requested as aforesaid then the mortgagee if he shall think fit and without prejudice to his right to exercise the powers hereinafter contained arising by such default may pay any such rent taxes rates and outgoings as aforesaid or effect or continue the said insurance and shall have and be entitled to have the same remedies in all respects for the repayment and recovery of the moneys so paid as are hereafter provided with regard to and as if such payments had originally constituted an integral part of the sum hereby secured And it is hereby declared that in case the mortgagor shall make default in payment of the principal sum aforesaid or any part thereof or of the interest thereon at the time and in the manner hereinbefore provided for payment or in the performance of any covenant or agreement herein contained and necessary for maintaining this security or if he shall become a bankrupt or suffer the said chattels and things or any of them to be distrained for rent rates or taxes or if he shall fraudulently remove or suffer the said chattels and things or any of them to be removed from the premises on which the same are or shall be or if he shall not without reasonable excuse upon demand in writing by the mortgagee

produce to him the last receipts of the mortgagor for rent rates and taxes or if execution shall have been levied against the goods of the mortgagor under any judgment at law Then and in any of such cases and notwithstanding the waiver of any previous default it shall be lawful for the mortgagee his servants or agents forthwith or when and as the mortgagee shall think fit without any previous notice or demand verbal written or otherwise to enter into and upon the premises in or about which the said chattels and things or any of them shall happen to be (and if necessary to use force and break into the said premises and remove or break through any obstruction) and to seize and take possession of the whole or any part of the said chattels and things and after taking possession thereof to relinquish and again to take possession thereof as often and whenever he shall think fit or if the mortgagee shall so think fit to retain and keep possession of the whole or any part of the said chattels and things and for that purpose to put and continue a man or so many men as he shall think fit in possession thereof in and upon the said premises or elsewhere and after the expiration of five clear days from the day of so taking possession if the mortgagee shall so think fit to sell the whole of the said chattels and things or any part thereof or to remove them to any other premises and sell the same or any part thereof when and as he shall think fit either on the premises where the same may be without removal or otherwise and either by public auction or private contract together or in lots for such price or prices as can be obtained for them or to have them valued by a licensed appraiser and to purchase them at such valuation and hold the moneys to arise from such sale or valuation upon trust in the first place to reimburse himself the principal moneys and interest remaining due upon the security of these presents or so much thereof as shall remain unpaid (including all payments damages costs charges and expenses incurred or sustained by the mortgagee in and about entering the said premises and seizing taking retaining and keeping possession of the said chattels and things or any part thereof and in and about the carriage removal warehousing valuing or sale of the same) And in the next place (or in the first place if he shall so think fit) to pay all or any charges or incumbrances whether rent rates taxes or on any other account whatsoever which shall affect or attach to the said chattels and things or any of them or the premises in or about which the same shall happen to be and to pay over the surplus (if any) to the mortgagor And the receipts of the mortgagee alone for all or any moneys payable or receivable under these presents shall be sufficient discharges to purchasers or others and all persons paying

the same shall be exempted from seeing to the application thereof And upon any such sale the purchaser shall not be bound to see or inquire whether any such default has been made as aforesaid And it is hereby further declared and agreed that upon payment by the mortgagor unto the mortgagee of the principal sum aforesaid together with the interest then due and all payments costs damages or expenses made incurred or sustained by the mortgagee pursuant to the powers herein contained without any deduction Then and in such case the mortgagee shall at the request and cost of the mortgagor reassign the said chattels and things or so much thereof as may remain unsold or undisposed of unto the mortgagor his executors administrators and assigns or as he or they may direct And it is lastly declared that all powers and rights hereby conferred on the mortgagee shall devolve on and be exerciseable by his executors administrators and assigns. [*Proviso as in Form* 3.] In witness &c.

No. 6.

Bill of Sale of Chattels and Growing Crops, together with Fixtures, Plant and Machinery.

This Indenture made the day of One thousand eight hundred and Between of the one part and of the other part Whereas the said is now indebted to the said in the sum of and has applied to him for a further advance of which sum the said has agreed to lend upon having security for the repayment thereof together with the said sum of now owing by the said and also of any further moneys which the said may hereafter advance to the said on this security and which shall be specified in a memorandum or memoranda to be endorsed hereon and interest for the same respectively but so that nevertheless the whole sum secured by these presents shall not exceed the sum of £ Now this indenture witnesseth that in consideration of £ now paid to the said by the said the receipt of which the said hereby acknowledges He the said doth hereby assign unto the said his executors administrators and assigns All and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the

payment of the sum of £ and interest thereon at the rate of per cent. per annum And also as a like security all fixtures removeable by the said and all plant and trade machinery which said fixtures plant and trade machinery now are or hereafter during the continuance of this security shall be used in attached to or brought upon the and premises situate at aforesaid in substitution for any of the like fixtures plant or trade machinery specifically described in the schedule hereto annexed And also all the crops of grass wheat barley and other crops now at the time of the execution of these presents actually growing in or upon the farm and lands called situate at now in the occupation of the said under an indenture of lease dated the day of and made between of the one part and of the other part And all the interest of the said of and in the said assigned premises respectively And the said doth agree and declare that he will duly pay to the said the said sums of £ and £ now respectively due and lent as aforesaid together with the interest then due after the rate aforesaid on the day of And also will pay to the said at the expiration of from the time of the advance such further sum or sums of money if any as he may hereafter advance to the said not exceeding with the moneys aforesaid the sum hereby secured with interest thereon after the rate aforesaid computed from the time of such advance And will [*agreement for payment of interest and other agreements by mortgagor including agreement for insurance and right to assign, as in Form* 4] And also that he has not mortgaged charged or encumbered the land and premises aforesaid or any of them to which the said fixtures are affixed or on which the said crops grow And it is hereby declared that in case the said shall make default in payment of the principal moneys hereby secured or any part thereof or of the interest thereon at the times and in the manner hereinbefore appointed for payment thereof respectively or [*events on which possession may be taken as in Form* 4] Then and in any of such cases it shall be lawful for the said his executors administrators or assigns his or their servants or agents forthwith or when and as he or they shall think fit without any previous notice or demand verbal written or otherwise to enter into and upon the premises in or about which the said premises hereby assigned or intended so to be or any of them shall

happen to be or be supposed to be (and if necessary to use force and break into such premises and remove or break through any obstruction) and to seize and take possession of the whole or any part of the said chattels and things fixtures plant and machinery or any of them And also either with or without horses carts and carriages to enter into and upon the said farm and lands and take possession of the said growing crops and after the expiration of five clear days from the day of taking possession of the said premises hereby assigned respectively if the said shall so think fit to sever the said fixtures and to mow reap and gather the said crops and carry away the same and to sell the said crops fixtures plant machinery chattels and things or any part thereof when and as the said shall think fit either on the premises where the same may be without removal or to remove them to any other premises and to sell the same either by public auction or private contract together or in lots for such price or prices as can be obtained for them with full power to buy in the same or to rescind or vary any contract for sale or to have them valued by a licensed appraiser and to purchase them at such valuation And to receive and hold the moneys to arise from the sale aforesaid and thereout to pay and retain the sum remaining due upon the security of these presents (including all payments damages costs charges and expenses incurred or sustained by the said in or about seizing taking or keeping possession of the premises hereby assigned or any part thereof and in and about the carriage removal warehousing valuing or sale thereof) And in the next place (or in the first place if he shall so think fit) to pay all or any charges or incumbrances whether rent rates taxes or on any other account whatsoever which shall affect or attach to the said premises hereby assigned or any of them or the premises in or about which the same shall happen to be and to pay over the surplus (if any) to the mortgagor [*Receipt clause, agreement for defeasance on payment or for reassignment, and proviso, as in Forms* 4 *or* 5]

In witness, &c.

Signed and sealed by the said
in the presence
of me

THE SCHEDULE ABOVE REFERRED TO.

Receipt for Further Advance.

Received the day of 18 from the within-

named mortgagee the sum of as and by way of a further advance and charged on the security of and subject to all the covenants and agreements of the within presents such sum to be repaid on the day of 18 or on such extended days as may be agreed upon.

Witness

No. 7.

Bill of Sale, from the Sheriff, of Goods taken in Execution. [a]

This Indenture made the day of One thousand eight hundred and Between of Esquire, High Sheriff of the county of (hereinafter called the said sheriff) of the one part and of (hereinafter called the purchaser) of the other part Whereas a writ of fieri facias issuing out of the Division of Her Majesty's High Court of Justice directed to the said sheriff was received at the office of the under-sheriff of the said county commanding the said sheriff that he should cause to be levied of the goods and chattels of within his bailiwick a certain debt of which had recovered against him in the said division together with the sum of for interest damages costs and charges which the said had sustained and expended by reason of his suit And whereas the said sheriff hath by virtue of the said writ seized and taken in execution certain goods and chattels of the said being in and upon the messuage buildings and premises now in the occupation of the said situate and being in the county aforesaid and hath caused the same goods and chattels to be appraised by a person of competent skill who hath valued the same at the sum of And whereas the said sheriff hath agreed to assign all the said goods and chattels so taken in execution as aforesaid unto the said purchaser for the sum of at which the same have been

(a) A sheriff may sell the goods to the execution creditor; and if they are valued and delivered to a purchaser in good faith, the sale is valid without a bill of sale. (Hernaman *v.* Bowker, 11 Ex. 760; *ex parte* Villars, *re* Rogers, L. R. 9 Ch. 432; 42 L. J. Bank. 76; 22 W. R. 603; 30 L. T. 348.) Where the sheriff sells and delivers chattels to a purchaser, the sale, therefore, being complete and independent of any written document of title, registration of a receipt and inventory given by the sheriff was unnecessary under the principal Act. (Marsden *v.* Meadows, 7 Q. B. D. 80.) It would seem, however, that where the contract was by bill of sale, given by the sheriff, such bill of sale must have been registered. Such bill of sale, being absolute, is not governed by the amendment Act. From and after the 31st of December, 1883, where the sheriff sells the goods of a debtor under an execution for a sum exceeding £20 (including legal incidental expenses), the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale. (B. A., 1883, s. 145.)

valued and appraised as aforesaid Now this indenture witnesseth that in consideration of the sum of upon the execution of these presents by the said purchaser paid to the said sheriff the receipt whereof is hereby acknowledged He the said sheriff as far as he lawfully can or may by virtue of his said office of sheriff but not further or otherwise doth hereby assign unto the said purchaser his executors administrators and assigns All and singular the goods chattels effects and things which have been taken in execution by the said sheriff by virtue of the said writ of fieri facias and which are specifically described in the schedule or inventory hereunder written or hereunto annexed To hold the said goods chattels effects and things unto the said purchaser his executors administrators and assigns absolutely In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Signed with the name of sheriff of the county of , sealed with his seal of office and delivered as his act and deed by under-sheriff[a] of the said county in my presence the effect of the above written bill of sale having been explained to the said before his execution thereof by me the attesting solicitor.

No. 8.[b]

Assignment of Bill of Sale.

This Indenture made the day of One thousand eight hundred and Between of of the one part and of of the other part Whereas of by an indenture bearing date the day of did for the consideration therein set forth assign unto the said

(*a*) The bill of sale is sufficiently executed by either the under-sheriff or his deputy (Cookson *v.* Fryer, 1 F. & F. 328); and where a bill of sale of goods taken under a fieri facias is made by an officer of the sheriff, the Court will presume that he was duly authorised to make it (Robinson *v.* Collingwood, 17 C. B. N. S. 777).

(*b*) If a further advance is made upon an assignment, the deed should be attested and registered as a bill of sale, and should be in accordance with the form in the schedule to the amendment Act.

his executors administrators and assigns all and singular the several chattels and things specifically described in the schedule thereto annexed by way of security for the payment of the sum of pounds and interest thereon subject to the proviso for redemption of the said chattels and things on payment to the said his executors administrators or assigns of the said sum of together with interest on the same in the meantime after the rate of per centum per annum And whereas there is now due to the said on the security of the said indenture the sum of but all interest thereon has been duly paid up to the day of last And whereas the said has agreed to pay to the said the said sum of upon having such assignment as is hereinafter contained of the said sum of and the securities for the same Now this indenture witnesseth that in pursuance of the said agreement and in consideration of at or upon the execution of these presents by the said paid to the said the receipt whereof is hereby acknowledged He the said doth hereby assign unto the said his executors administrators and assigns All that the said principal sum of now remaining due and owing to the said as aforesaid on the security of the said indenture and the interest now due or to become due for the same And also all and singular the said chattels and things specifically described in the said schedule and assigned by the said recited indenture And all the estate right title interest claim and demand of him the said in to or upon the said premises or any part thereof To hold the same respectively unto the said his executors administrators and assigns Subject nevertheless to the proviso in the said recited indenture contained for redemption of the said several premises on payment by the said his executors or administrators of the said sum of with interest as aforesaid And the said doth hereby for himself his heirs executors and administrators covenant with the said his executors administrators and assigns that the said debt or sum of is still due and owing on the security of the said recited indenture And that he the said hath not done or suffered or been knowingly party or privy to any act deed matter or thing whereby the said several chattels and things hereinbefore expressed to be hereby assigned are is can or may be impeached incumbered or affected in title or otherwise howsoever or whereby the said

his executors administrators or assigns might or could be prevented from recovering the said sum of hereby assigned or any part thereof And the said doth hereby for himself his executors administrators and assigns covenant with the said his executors and administrators that he the said his executors administrators and assigns will at all times hereafter save harmless and keep indemnified the said his executors and administrators of from and against all costs charges damages and expenses whatsoever which shall or may become payable by the said his executors or administrators for or by reason of any action suit or other proceeding which shall or may be brought or prosecuted in respect of any act matter or thing done or to be done committed or suffered in respect of the said recited indenture or these presents In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered by the said in the presence of

Received the day and year first above-written of and from the above-named the sum of being the consideration money above expressed to be paid by him to me £

Witness

No. 9.

Miscellaneous Clauses.

Assignment of tenant-right, good-will, and book-debts.

And by way of further security for the said sum of the mortgagor doth hereby assign unto the mortgagee All that the tenant right of him the mortgagor in and to the lands and premises situate at

And all that the good-will and interest of him the mortgagor in the business of a as the same is now carried on by him at aforesaid and in any subsidiary trade or trades business or businesses carried on by him at or in the said premises in connection with the said business of a and the full benefit and advantage thereof

And all and every the book and other debts sum and sums of money

due and owing or which during the continuance of this security shall become due and owing to the mortgagor from any person or persons whomsoever in connection with the said business (a) And all the interest of the mortgagor of and in the said assigned premises respectively And the mortgagor doth agree and declare that he will duly pay the principal sum aforesaid by equal instalments on the day of and the day of in each and every such payments to be made between the hours of of the clock in the forenoon and of the clock in the afternoon on the aforesaid days or on such other extended days as may from time to time be agreed upon and assented to by the mortgagee in writing and in default of payment of any one instalment the whole amount remaining unpaid shall become immediately due (b) until by means of such payments the said principal sum shall have been fully satisfied together with all costs payments charges damages and expenses hereinafter mentioned And also so long as the principal sum aforesaid or any part thereof shall remain unpaid will upon the days and times hereinbefore appointed for payment of the instalments of the said principal sum pay interest after the rate aforesaid upon the said debt and further advance or upon so much thereof as shall for the time being remain unpaid But it is hereby declared and agreed that if and when the interest for the said debt and further advance after the rate of per cent. per annum shall be punctually paid upon the days and in the manner hereinbefore appointed for payment thereof or within thereafter the mortgagee shall accept the same in lieu and in satisfaction for the interest after the rate of per cent. per annum payable as aforesaid but without prejudice to his right to require payment of interest after the higher rate for any instalment of interest which shall not be punctually paid within the time aforesaid [*Agreements by mortgagor as in preceding forms*] And for the more effectually maintaining this security and for enabling the mortgagee to obtain the full benefit thereof the mortgagor doth hereby appoint the mortgagee the true and lawful attorney of him the mortgagor in the name and as the act and deed of the mortgagor or in the name of the mortgagee at any time or times hereafter and at the costs and charges of the mortgagor to make or perfect any assignment to the mortgagee himself or to any other person or persons of all

Payment by instalments.

And interest

Reduction of interest on punctual payment.

Power of attorney.

(*a*) Book-debts are not chattels within the Bills of Sale Acts, and an assignment of book-debts thereafter to become due is still valid, but where after acquired book-debts are assigned, a separate instrument is recommended. Book-debts due at the date of the assignment should be specified in the schedule.

(*b*) A clause to this effect does not operate as a penalty. (Wallingford *v.* Mutual Society, 5 App. Cases, 685.)

and every the said book and other debts sum and sums of money included in this security and to demand receive and give receipts for the same or any part thereof and to commence and prosecute settle and compromise all actions and proceedings for obtaining or enforcing the transfer and delivery of the same or any part thereof and for all or any of the purposes aforesaid from time to time to appoint a substitute or substitutes and to revoke such appointments at pleasure and generally to make do and execute all such deeds and things in relation thereto at his discretion as fully and effectually as the mortgagor himself could have done if these presents had not been executed the mortgagor hereby agreeing to ratify and confirm and hereby confirming all that the mortgagee shall lawfully do under this present power for the purposes aforesaid or any of them And further for the consideration aforesaid the mortgagor doth hereby attorn and become tenant from year to year to the mortgagee for and in respect of the messuage land and buildings situate at

ttornment
ause.

aforesaid now in the occupation of the mortgagor at the yearly rent of pounds clear of all deductions to be paid by equal payments on the and the first payment whereof shall be made on the day of next but so that every payment of such rent actually made shall be accepted by the mortgagee in or towards satisfaction of the moneys for the time being remaining due upon this security.

APPENDIX B.

INTERPLEADER.

PART I.

INTERPLEADER IN THE HIGH COURT OF JUSTICE.

RULES OF THE SUPREME COURT, 1883.[a]

ORDER LVII.

INTERPLEADER.

1. Relief by way of interpleader may be granted—[b]

(*a*) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto; [c]

(*a*) By the Statute Law Revision and Civil Procedure Act, 1883, the statutes relating to interpleader are repealed; and the following rules, which come into operation on the 24th October, 1883, and apply to all proceedings taken on or after that day in all causes and matters then pending, will govern the whole practice of interpleader in the High Court.

(*b*) The granting of an interpleader order is purely discretionary (Wright *v.* Freeman, 40 L. T. 358). Previous to the Interpleader Acts, a mode of relief existed in some few cases at common law and more generally in the Court of Chancery by a bill of interpleader (Crawshay *v.* Thornton, 2 M. & C. 1), which, it would seem, still existed prior to the Judicature Acts (Arrayne *v.* Lloyd, 1 Bing. N. C. 720; 1 Scott, 1609). When two or more persons having a title derived one from the other, or from a common source, claimed the same debt or duty from a third party, in which he had no interest, the claimants were called upon to contest the matter between themselves, so that the Court might adjudge to whom the thing claimed should be delivered. It was formerly held that the Court would only grant relief by interpleader where both claims were of a legal, as distinguished from a merely equitable character (Roach *v.* Wright, 8 M. & W. 155); but it has now long been considered settled law that upon an interpleader, whether by issue or summons, the Court will take cognisance of equitable claims (Rusden *v.* Pope, L. R. 3 Ex. 269; 37 L. J. Ex. 137; 18 L. T. 651; 16 W. R. 1122; Duncan *v.* Cashin, L. R. 10 C. P. 554; Engelbach *v.* Nixon, 44 L. J. C. P. 396; 33 L. T. 831; L. R. 10 C. P. 645). It has been said that the Court will not grant an interpleader where the defendant is out of the jurisdiction (Lindsey *v.* Barron, 7 Dowl. 291).

(*c*) The rule extends the jurisdiction to grant relief. Considerable diversity formerly existed between the practice in the Courts of Common Law and Chancery in relieving by interpleader; thus, in Chancery, relief would have been granted in cases of conflicting claims although no action had been commenced, but at law it was necessary that the party applying should be already defendant at the suit of one of the claimants in an action of the class specified in sec. 1 of 1 & 2 Will. IV. c. 58. The Interpleader Act applied only where a person was sued for the recovery of money or goods; thus, it did not apply to adverse claims to money due on a contract for work and labour (Turner *v.* Kendal, 13 M. & W. 171; 2 D. & L. 197), and the holder of title deeds has been held not entitled to apply for protection against opposing claims (Smith *v.* Wheeler, 1 Gale, 163); but where actions were brought against the acceptor of a bill of exchange by different parties, each claiming to be the lawful owner, the acceptor was held entitled to interplead (Regan *v.* Serle, 9 Dowl. 193). The words of the rule are of much wider application, but would seem not to apply to claims for unliquidated damages (Walter *v.* Nicholson, 6 Dowl. 517); but a defendant may interplead though the claimant only claims a lien (Harwood *v.* Betham, 1 L. J. Ex. N. S. 180).

(*b*) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.[a]

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(*a*) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and[b]

(*b*) That the applicant does not collude with any of the claimants;[c] and

(*a*) Where there was a claim to goods or chattels taken in execution (Smith *v.* Saunders, 37 L. T. 359), a sheriff might always apply for relief before action brought against him, and it would seem even before seizure (but see Holton *v.* Guntrip, 3 M. & W. 145), if a *bonâ fide* claim to the goods had been set up (Green *v.* Brown, 3 Dowl. 337), although the claimant only claims a lien and not the absolute property in the goods (Ford *v.* Baynton, 1 Dowl. 357); but a mere notice of other writs (Salmon *v.* James, 1 Dowl. 369), or of bankruptcy, was not sufficient (Bentley *v.* Hook, 2 C. & M. 426); nor was notice of a bill of sale dated after the levy (*re* Sheriff of Oxford, 6 Dowl. 136; Lea *v.* Rossi, 24 L. J. Ex. 280). If the execution debtor alleged that he held the goods seized solely as trustee, and in such character disputed the seizure, the sheriff might, under the former practice, interplead (Fenwick *v.* Laycock, 2 Q. B. 108; 6 Jur. 341; 1 G. & D. 532), although his right to relief appeared so far to be affected by the rule. The sheriff's right to poundage depends on the legality of the seizure, and therefore abides the determination of the claim, and on payment into Court of the proceeds of the goods he was not formerly allowed to deduct his expenses. Generally the unsuccessful party will be directed to pay the sheriff's possession money, and he may become entitled to possession money, either by consent or order of the Judge (Dabbs *v.* Humphries, 3 Dowl. 377). Any extra expense incurred by him in obeying the order of the Court will, it seems, be allowed him (Armitage *v.* Foster, 1 H. & W. 208). If the sheriff's application is unsuccessful, he may be ordered to pay costs (Anderson *v.* Calloway, 1 Dowl. 636).

(*b*) The affidavit should fully state the nature of the claim; and if it turns out that the defendant had not good grounds for supposing that he would be sued, the rule obtained by him may be discharged with costs (Sharp *v.* Redman, 1 Jur. 775). If the party by his own act has placed himself in a position to be sued, the Court will not interfere; thus, it will not protect the holder of a stake deposited to abide the event of an illegal race (Applegarth *v.* Colley, 2 Dowl. N. S. 223). Unnecessary delay may disentitle the party to relief. If there has been delay in the application it should be accounted for, as no supplemental affidavit is allowed (Cooke *v.* Allen, 2 Dowl. 11). Form of affidavit, p. 227. Another rule formerly prevailing was, that relief would not be granted if the applicant was under a special obligation to either claimant; but under the Common Law Procedure Act, a defendant might interplead although he had incurred a personal liability to one of the contending parties, unless he was estopped as to one of them, or unless the fair rights of the claimants would be prejudiced if he were permitted to do so (Meynell *v.* Angell, 32 L. J. Q. B. 14; Best *v.* Hayes, 1 H. & C. 718; 32 L. J. Ex. 129; Tanner *v.* European Bank, 35 L. J. Ex. 151; L. R. 1 Ex. 261). Of course, if the defendant claims an interest in the subject-matter of the action the rule will not apply (Slaney *v.* Sydney, 14 M. & W. 800; 15 L. J. Ex. 72; 3 D. & L. 250; Patorni *v.* Campbell, 3 Dowl. N. S. 397; 12 M. & W. 277). Thus, an auctioneer who claims his commission could not maintain an interpleader against claimants to a deposit (Mitchell *v.* Hayne, 2 Sim. & Stu. 63); but a lien for charges, which attaches without reference to the party who may ultimately prove successful, was not such an interest as prevented the Act applying (Cotter *v.* Bank of England, 2 Dowl. 728; Attenborough *v.* London and St. Katharine Dock Company, 3 C. P. D. 450; 47 L. J. C. P. 763; 38 L. T. 404; 26 W. R. 583).

(*c*) It would seem the denial of collusion cannot be rebutted (Manby *v.* Robinson, L. R. 4 Ch. 347; 17 W. R. 479; 38 L. J. Ch. 309; 20 L. T. 385). Under the former practice on interpleader by a sheriff, the denial of collusion might be

(*c*) That the applicant is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a Judge may direct.[a]

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.[b]

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.[c]

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.[d]

omitted (Bond *v.* Woodhall, 4 Dowl. 351); but he might be disentitled to relief by collusion, as where, at the request of one of the parties, he delayed his application to the prejudice of the other (Mutton *v.* Young, 4 C. B. 371); or if he has been guilty of neglect (Brackenbury *v.* Laurie, 3 Dowl. 180); or has committed any injury beyond the mere seizure of the goods (Hollier *v.* Laurie, 15 L. J. C. P. 294); or by taking an indemnity (Ostler *v.* Bower, 4 Dowl. 606), or if he is personally interested (Duddin *v.* Long, 1 Bing. N. C. 229), or if he himself has brought about the claim, as when an under-sheriff informed certain creditors that a *fi. fa.* against the debtor's goods had been received by him, by which means bankruptcy proceedings were accelerated and the plaintiff's execution defeated (Cox *v.* Balne, 14 L. J. Q. B. 95), or by seizing goods which were under a distress (Haythorn *v.* Bush, 2 Dowl. 641).

(*a*) The Court will not relieve the sheriff if he is unable to dispose of the claim as the Court may direct; thus, if he has paid over the proceeds of the execution, or handed over any part of the goods to the claimant (Scott *v.* Lewis, 4 Dowl. 259; Braine *v.* Hunt, 2 C. & M. 418; 2 Dowl. 391). He may, however, interplead, although the goods are in the possession of some person other than the defendant (Allen *v.* Gibbon, 2 Dowl. 292), and notwithstanding that he has refused an indemnity (Levy *v.* Champneys, 2 Dowl. 454; Harrison *v.* Foster, 4 Dowl. 558), or if the execution has been abandoned where the goods have been sold under it, if he has not put it out of his power to obey the order of the Court, as by paying the proceeds to the execution creditor (Baynton *v.* Harvey, 3 Dowl. 344).

(*b*) This rule is similar to sec. 12 of the C. L. P. Act, 1860, under which it was held that the right to relief by interpleader was not barred by the fact that the claims are not co-extensive (Attenborough *v.* St. Katharine Dock Co., 3 C. P. D. 450).

(*c*) By Rules S. C., 1875, Order i., R. 2 (now annulled), the application by a defendant was to be made at any time after being served with a writ of summons and before delivering a defence.

(*d*) The summons (Form, p. 229), which must be served on all parties, is now in the first instance returnable in chambers before a master. By R. S. C., 1883, Order liv., R. 17, every application to a master at chambers shall, at the time of hearing (unless any other master's name shall already have been marked thereon), be marked by such master with his name, and the cause or matter in which such application has been so marked shall thereupon become assigned to such master; and by Order v., R. 6, every subsequent application which by the Rules is to be heard and dealt with by a master, including taxation of the costs, shall be heard and dealt with by such master. The master, on reading the evidence and hearing the parties, will then make an order according to one of the forms of orders on interpleader; thus, he may direct an issue or substitute the claimant for the original defendant; or exercise any of the powers vested in the Court or a judge by this order. If the claimant desires to be heard, he must be prepared with an affidavit in support of his claim (Powell *v.* Lock, 3 A. & E. 315) (Form, p. 230), which need not, however, be made by himself (Webster *v.* Delafield, 18 L. J. C. P. 186), although the execution creditor need not have done so (Angus *v.* Wootton, 3 M. & W. 310). Under the former practice no one could be heard against the rule unless named therein, although in fact a claimant; and if he was named in one capacity he could not appear in another (Clark v. Lord, 2 Dowl. 55); but a claimant may be added to the summons, on giving notice of his claim (Walker *v.* Kerr, 12 L. J. Ex. 204; 7 Jur. 156); and it seems a trustee in the bankruptcy of the execution debtor may appear (Ibbetson *v.* Chandler, 9 Dowl. 250); thus, if after an interpleader issue

6. If the application is made by a defendant in an action, the Court or a Judge may stay all further proceedings in the action.[a]

7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.[b]

8. The Court or a Judge may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.[c]

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be

has been settled the execution debtor files a petition for liquidation, his trustee may be added as a claimant (Bird *v.* Matthews, 46 L. T. 512); but on the judgment debtor becoming bankrupt after an interpleader order, and his trustee claiming in priority to the judgment creditor, under the provisions of sec. 87 of the Bankruptcy Act, 1869, his title is subject to the claims of a bill of sale holder (Exp. Halling, *re* Haydon, 7 Ch. D. 157).

(*a*) There was a similar power to stay proceedings under the Interpleader Acts. If an issue is directed between a claimant and execution creditor, pending its determination, proceedings against the sheriff may be stayed, and an execution creditor has not an absolute right to a return of the writ (Angell *v.* Baddeley, 3 Ex. D. 49; 47 L. J. Ex. 86; 37 L. T. 653). The words "no action" in an interpleader order usually mean no action against the sheriff, but the Court has jurisdiction to direct that no action be brought against an execution creditor (Carpenter *v.* Pearce, 27 L. J. Ex. 143). In the absence of such an order a writ by a claimant against an execution creditor for damages for seizure of the goods has been held properly issued pending the trial of an interpleader issue (Hook *v.* Ind. 36 L. T. 467); but it may be observed that in this case the defendant had given an undertaking to appear, and thus waived any irregularity. Where, pending an interpleader, an action was brought against the sheriff for the seizure, it was decided to be premature (Hilliard *v.* Hanson, 21 Ch. D. 69; 47 L. T. 342; 31 W. R. 151); and the sheriff should apply to have any action brought against him disposed of together with the interpleader summons (Aylwin *v.* Evans, 47 L. T. 568; 52 L. J. Ch. 105). If a claimant, after an interpleader summons has been served on him, removes the goods from the custody of the sheriff, he will be guilty of a contempt of Court (Cooper *v.* Asprey, 32 L. J. Q. B. 209).

(*b*) Similar powers of relief were given by the Interpleader Acts, but now may be exercised by a master. Forms of Orders will be found, p. 230. Form of issue, p. 236.

If an issue be directed, it was always in the discretion of the Court who is to be plaintiff and who defendant on the record; but in general the claimant is plaintiff and the execution creditor defendant (Bramidge *v.* Adshead, 2 Dowl. 59). As an interpleader issue is for the purpose of informing the conscience of the Court as to the question in dispute, it should be in such a form as to determine the rights of the parties, and the order may direct admissions, or that conflicting rights be not set up (Woodford *v.* Bosanquet, 5 Q. B. 321; D. & M. 419).

(*c*) The rule is similar to sec. 14 of the Common Law Procedure Act, 1860, but, for the first time, this extensive power of determination may be exercised by a master, as the Rule excluding interpleader from the jurisdiction of the masters has been annulled. By analogy to the former practice, £50 will probably be the limit of value. By Rule 11, a decision under this Rule is final.

stated for the opinion of the Court. If a special case is stated, Order xxxiv. shall, as far as applicable, apply thereto.(a)

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish his claim, does not appear in pursuance of the summons, or having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.(b)

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be, or of the Court of Appeal.(c)

(a) A similar power was conferred by sec. 15 of the C. L. P. Act, 1860, but could only be exercised by a Judge. By Order liv., R. 20, if any matter appears to the master proper for the decision of a Judge, the master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the master with such directions as he may think fit. Order xxxiv. contains directions as to the form and practice on special cases. By s. 16 of the C. L. P. Act, 1860, error lay on a special case; and although this section is repealed, it would seem that an appeal may still be brought.

(b) If the claimant do not appear, he could not, formerly, be ordered to pay the costs of the application, nor were the costs ordered to be paid out of the fund in dispute (Lambert *v.* Cooper, 5 Dowl. 547); and in such a case each party has been ordered to pay his own costs, and that proceedings in the action be stayed on payment of the debt and costs (Murdoch *v.* Taylor, 6 Bing. N. C. 293). Where the claimant appears, he or some person who can depose to the facts, should make an affidavit in support of his claim (Powell *v.* Lock, 3 A. & E. 315; Webster *v.* Delafield, 7 C. B. 187). If the execution creditor does not appear, the sheriff will be ordered to withdraw from possession, and be protected from claims by the execution creditor (Eveleigh *v.* Salisbury, 5 Dowl. 369; 3 Bing. N. C. 298). If neither party appear, the sheriff will, it seems, be allowed to sell enough to satisfy his poundage and expenses. If the claimant neglect to bring the money into Court, pursuant to the order, he may be ordered to pay the costs. (Scales *v.* Sargeson, 4 Dowl. 231; see Cox *v.* Fenn, 7 Dowl. 50); and so if he or the execution creditor abandon his claim after an issue has been directed (Wills *v.* Hopkins, 3 Dowl. 346).

(c) This Rule is similar to sec. 17 of the C. L. P. Act, 1860, which has not been repealed, but the power of granting an appeal may prove beneficial. Formerly there was no appeal from a summary decision, nor could the judge give leave to appeal even by consent of parties (Dodds *v.* Shepherd, L. R. 1 Ex. D. 75; 45 L. J. Ex. 457; 34 L. T. 358; 24 W. R. 322; Buse *v.* Rosser, 28 W. R. 87); nor was there any appeal where the Judge had referred the matter into Court (Turner *v.* Bridgett, 51 L. J. Q. B. 377; 46 L. T. 517); nor does an appeal lie from an order of a Judge as to the costs of an interpleader issue. (Hartmont *v.* Foster, 8 Q. B. D. 82; 30 W. R. 129; 45 L. T. 429; 51 L. J. Q. B. 64). Any order in interpleader made by the Court of Bankruptcy can be appealed from (*Exp.* Streeter, *re* Morris, 19 Ch. D. 216), and where a Judge enters judgment on a motion after the trial of an interpleader issue, an appeal lay to the Court of Appeal (Witt *v.* Parker, 46 L. J. Q. B. 450; 25 W. R. 518; 36 L. T. 538), and must have been brought within 21 days. (McAndrew *v.* Barker, 7 Ch. D. 701; 47 L. J. Ch. 340; 26 W. R. 317.) The sheriff should not be served with notice of appeal (*Exp.* Webster, *re* Morris, 22 Ch. D. 136). It would seem that an appeal lies from a refusal to grant relief by interpleader, and also from the decision of the Court on a special case. By Order liv., R. 21, any person affected by any order or decision of a master may appeal therefrom to a Judge at chambers. If both parties consent to refer the matter to the master, they constitute him their arbitrator, and no appeal lies to the Judge (Edd *v.* Winsor, W. N. 1878, 88).

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for a debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.[a]

13. Orders xxxi. and xxxvi. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.[b]

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several Divisions, or before different Judges of the same division, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters. [c]

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.[d]

(*a*) The Rule is similar to sec. 13 of the C. L. P. Act, 1860, and still limits the power to order a sale to cases where the claim is made to goods as security for a debt, which restriction has frequently been found inconvenient where claims have been made by trustees of post-nuptial settlements or other instruments not given as security.

(*b*) Order xxxi. relates to discovery and inspection; Order xxxvi. to place and mode of trial. The issue when settled by the parties is set down for trial, but if the plaintiff neglects to set the issue down for trial the claimant should apply for payment to him of the money brought into Court, and the plaintiff will be ordered to pay the costs (Stanley *v.* Perry, 1 H. & W. 669; Scales *v.* Sargeson, 3 Dowl. 707). After the determination of the issue, the successful party was, in the absence of any contrary order, entitled to the money in Court and costs, upon an application made in the original action (Meredith *v.* Rogers, 7 Dowl. 596). Trial may now be had in any of the modes appointed by Order xxxvi. Formerly notice could not be given for trial by a judge without a jury, the practice in interpleader retaining all the incidents it had before the Judicature Acts (Hamlyn *v.* Betteley, 6 Q. B. D. 63; 50 L. J. C. P. 1; 29 W. R. 275); but the Court had power to order judgment to be entered, under Order xl., R. 10, without directing a new trial (Williams *v.* Mercier, 9 Q. B. D. 337). An interpleader order did not remove the case from the control of the Court (Wicks *v.* Wood, 26 W. R. 680), and interrogatories might be delivered in the course of proceedings on an interpleader issue (White *v.* Watts, 12 C. B. N. S. 267; 31 L. J. C. P. 381). Discovery being now regulated by Order xxxi., interrogatories cannot be delivered without leave.

(*c*) Under the former practice, if more than one action was pending, application had to be made in each (Allen *v.* Gilby, 3 Dowl. 143).

(*d*) By R. S. C., 1883, Order lxv., the costs of and incident to all proceedings in the Supreme Court are in the discretion of the Court or Judge; but nothing in the Rules contained shall deprive an executor, administrator, trustee or mortgagee, who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division. After a trial by jury, costs follow the event, unless the Judge before whom the action, matter, or issue is tried, or the Court shall, for good cause

SUPREME COURT OF JUDICATURE ACT, 1873.

(36 & 37 Vic. c. 66.)

Section 25.

Sub-sec. 6. Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one

Assignment of debts and choses in action.

otherwise order. Under the former practice, if the party applying for relief came in good faith, and within a reasonable time, he was generally allowed costs out of the fund in dispute, or his costs were ordered to be paid by the unsuccessful party. Where all parties appeared, the costs usually followed the event (Staley *v.* Bedwell, 10 A. & E. 145); thus, if a party succeeded as to a small part of his claim only, he might be ordered to pay costs, and if he substantially succeeded, he received them (Plummer *v.* Price, 39 L. T. 657), but costs were not, as a rule, allowed until the termination of the proceedings (Hood *v.* Bradbury, 6 M. & G. 981); but the applicant, under special circumstances, has been allowed his costs in the first instance (Bland *v.* Delano, 6 Dowl. 293; Reeves *v.* Barraud, 7 Scott, 281). The sheriff was not formerly allowed costs, the proceedings being for his benefit (Bowdler *v.* Smith, 1 Dowl. 418; Gebhardt *v.* Rose, 15 L. T. N. S. 535); nor will he be ordered to pay them if he has acted fairly (Clarke *v.* Lord, 2 Dowl. 55); but if he has been guilty of neglect in making the application, or in giving the proper notices, or if he has not made due inquiry into the claim, he may be ordered to pay costs. Under the present practice, the sheriff's costs are in the discretion of the Court (Exp. Streeter, *re* Morris, 19 Ch. D. 216).

An order for security for costs may be made if one of the parties resides without the jurisdiction (Williams *v.* Crossling, 4 D. & L. 660; 16 L. J. C. P. 112; Webster *v.* Delafield, 7 C. B. 187); but if one of the defendants is interested in the result of the issue as a plaintiff, he is not entitled to call upon the plaintiff in issue to give security for costs on the ground that the latter is a foreigner residing abroad (Belmont *v.* Aynard, 4 C. P. D. 352).

The proceedings in an action, and in interpleader on an execution levied in the action, are wholly distinct, and the costs recovered in one cannot be set off against costs directed to be paid in the other; thus, in an action against two defendants, one obtained judgment while execution issued against the other whose goods were seized and claimed by the co-defendant; on his claim being barred, with costs, it was held that the plaintiff could not deduct these costs from those payable to the defendant in the action (Barker *v.* Hemming, 49 L. J. Q. B. 730; 43 L. T. 678).

A party entitled to costs might formerly have proceeded under sec. 7 of the Interpleader Act (Cetti *v.* Bartlett, 9 M. & W. 840), and may now enforce any order for costs in the same manner as a judgment to the same effect (Order xlii., R. 24). There is no appeal from the order as to costs of an interpleader (Hartmont *v.* Foster, 8 Q. B. D. 82).

claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.[a]

AN ACT TO ENABLE COURTS OF LAW TO GIVE RELIEF AGAINST ADVERSE CLAIMS MADE UPON PERSONS HAVING NO INTEREST IN THE SUBJECT OF SUCH CLAIMS[b] (1 & 2 Will. IV. c. 58).

[20*th Oct.*, 1831.

Upon application by a defendant in an action of assumpsit, &c., stating that the right in the subject-matter is in a third party, the Court may order such third party to appear and maintain or relinquish his claim, and in the meantime stay proceedings in such action.

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof be it enacted, &c., that upon application made by or on the behalf of any defendant sued in any of His Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any

(*a*) In cases under this section, relief by interpleader has been granted, on notice of conflicting claims, without waiting for an action to be brought (Lacey *v.* Wieland, W. N. 1876, 24; *re* New Hamburgh Railway Co., W. N. 1875, 293; Wilson's J. Acts, 2nd ed. 129).

(*b*) The statute did not extend to the Crown (Candy *v.* Maugham, 6 M. & G. 710; 1 D. & L. 745; 7 Scott, N. R. 401). The Statute Law Revision and Civil Procedure Act, 1883, 46 & 47 Vic. c. 49, repeals the whole of 1 & 2 Wm. IV. c. 58, and all sections of the C. L. P. Act, 1860, relating to interpleader, except sec. 17. The repeal, which does not extend to Scotland or Ireland, takes effect from the 24th of October, 1883 (sec. 2). By sec. 5 the repeal shall not affect (*a*) anything done or suffered before the passing of the Act under any enactment repealed, (*b*) any jurisdiction or principle, or rule of law or equity established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or (*c*) the application or incorporation of any enactment repealed by this Act by or under any enactment not repealed by this Act, or by or under any Order in Council, so long as such Order remains in force. By sec. 6 (*c*) the enactments relating to the making of Rules of Court, contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, shall be deemed to extend and apply to the matters contained in and regulated by the enactments repealed. Sec. 7.—If and in so far as any enactment repealed by this Act, or by the Civil Procedure Acts Repeal Act, 1879, applies, or may have been by Order in Council applied to the Court of the County Palatine of Lancaster, or to any inferior Court of civil jurisdiction, such enactment shall be construed as if it were contained in a local and personal Act specially relating to such Court, and shall have effect accordingly. Sec. 8.—It shall be lawful for the Queen, from time to time, by Order in Council, to extend to any Court of inferior civil jurisdiction any of the provisions of the Supreme Court of Judicature Act, 1873, and Acts amending it, or of the Rules of Court made thereunder, with any such modifications as may be necessary or desirable, in the same manner as and to the like extent that the provisions of the Common Law Procedure Acts, and of the general rules made thereunder, might, under the powers given by those Acts, have been extended to any such Court.

action of assumpsit, debt, detinue or trover, such application being made after declaration, and before plea,[a] by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject-matter of the action in such manner as the Court (or any Judge thereof) may order or direct; it shall be lawful for the Court, or any Judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues,[b] and also to direct which of the parties shall be plaintiff or defendant in such trial, or, with the consent of the plaintiff and such third party, their counsel or attorneys, to dispose of the merits of their claims and determine the same in a summary manner and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.

Sec. 2. (See C. L. P. Act, 1860, sec. 17).

Judgment and decision to be final.

Sec. 3. And be it further enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or Judge to declare such third party, and all persons claiming by, from, or under him, to be ever barred from prosecuting his claim against the original defendant, his executors, or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.

If such third party shall not appear, &c., the Court may bar his claim against the original defendant.

Sec. 4. Provided always, and be it further enacted, that no order shall be made in pursuance of this Act by a single Judge of the Court of Common Pleas of the said county Palatine of Durham who shall not also be a judge of one of the said Courts of Westminster, and that every order to be made in pursuance of this Act by a single

Proviso as to orders made by a single Judge.

(a) To obtain relief under this statute the party must have been a defendant in one of the specified actions (Hollier *v.* Laurie, 3 C. B. 334; 10 Jur. 800; 15 L. J. C. P. 294), that proceedings have been threatened was not sufficient (Parker *v.* Linnett, 2 Dowl. 562).

(b) By the 8 & 9 Vic. c. 109, s. 19, the use of feigned issues alleging imaginary wagers was abolished, and a form of issue provided.

Judge not sitting in open Court shall be liable to be rescinded or altered by the Court in like manner as other orders made by a single Judge. (a)

If a Judge thinks the matter more fit for the decision of the Court, he may refer it.

Sec. 5. Provided also, and be it further enacted, that if upon application to a Judge, in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court; and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceedings had originally commenced by rule of Court, instead of the order of a Judge. (b)

For relief of sheriffs and other officers in execution of process against goods and chattels.

Sec. 6. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons, not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, as well before as after any action brought against such sheriff or other officer, to call before them, by rule of Court (c) as well the party issuing such process as the party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

Rules, orders, &c., made in pursuance of this Act may be entered of record and made evidence.

Sec. 7. And be it further enacted, that all rules, orders, matters and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by such rule or order; and every such rule or order so entered shall have the force and effect of a judg-

(a) This section did not apply to orders made by consent (Shortridge *v.* Young, 12 M. & W. 5), and by C. L. P. Act, 1860, s. 17, the decision of a Judge in summary matters is final.

(b) This did not apply to sheriff's interpleader.

(c) The inconvenience of this practice was remedied by 1 & 2 Vic. c. 45, s. 2.

ment,[a] except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fieri facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution, if by *fieri facias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court.

Costs.

Writs.

Sheriffs' fees.

Sec. 8. And whereas by a certain Act made and passed in the last session of Parliament, entitled: "An Act to improve the proceedings in prohibition and on writs of mandamus," it was among other things enacted, that it should be lawful for the Court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned, to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or, in default of appearance after service thereof, to exercise all such powers and authorities, and to make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims; and whereas no such Act was passed during the then present session of Parliament, be it therefore enacted, that upon any such application as is in the said Act hereinbefore mentioned, it shall be lawful for the Court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act.

Upon any application under 1 Will. IV. c. 21, and this Act, the Court to exercise such powers and make such rules as are given by, or mentioned in this Act.

COMMON LAW PROCEDURE ACT, 1860.

23 & 24 Vic. c. 126.

Sec. 12.[b] Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in

Interpleader may be granted though titles have not a common origin.

(*a*) This part of the section was repealed by sec. 18, C. L. P. Act, 1860. The effect of the section was to constitute a party in an interpleader issue, who had obtained an order for his costs, a judgment creditor within the garnishee clauses of the C. L. P. Act, 1854 (Marples *v.* Hartley, 30 L. J. Q. B. 223).

(*b*) Repealed, as to proceedings in the High Court, by the Statute Law Revision and Civil Procedure Act, 1883.

execution under process issued from any one of the Superior Courts, or from the Court of Common Pleas at Lancaster or the Court of Pleas at Durham, and the defendant in such action, or the sheriff or other officer, has applied for relief under the provisions of an Act made and passed in the session of Parliament held in the first and second year of the reign of His late Majesty King William the Fourth, intituled "An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims," it shall be lawful for the Court or a Judge to whom such application is made, to exercise all the powers and authorities given to them by this Act and the hereinbefore mentioned Act passed in the session of Parliament held in the first and second years of the reign of His late Majesty King William the Fourth, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.

1 & 2 Will. IV. c. 58.

Court or Judge may direct sale of goods seized in execution.

Sec. 13.[a] When goods or chattels have been seized in execution by a sheriff or other officer under process of the above mentioned Courts, and some third person claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt, the Court or a Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or Judge may seem just.[b]

Power to Court or Judge to decide summarily in certain cases.

Sec. 14.[a] Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or Judge wherever, from the smallness of the amount in dispute or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner, upon such terms as they or he shall think fit to impose, and to make

(*a*) Repealed, as to proceedings in the High Court, by the Statute Law Revision and Civil Procedure Act, 1883.

(*b*) By an Order in Council of the 14th August, 1879, the provisions contained in this section shall apply to all Courts of Record established under the provisions of the County Courts Act, 1846, and the City of London Court of Record, as constituted by the County Courts Act, 1867, in respect of any goods seized in execution by any high-bailiff or bailiff of any of the said Courts of Record under process of such Courts, and the powers and duties incident to the provisions of the section with respect to matters in the said Courts of Record shall and may be exercised by the Judges of the said Courts respectively, or their respective deputies, and the statutes, rules of practice, orders and forms for the time being in force and used in the said Courts of Record shall be adopted with reference to proceedings in such Courts under the said section, so far as the same are applicable. ("London Gazette," Aug. 22, 1879). By sec. 7 of the Statute Law Revision and Civil Procedure Act, 1883, the section, as applied to the Courts named in the Order of Council, is to be construed as if it were contained in a local and personal Act specially relating to such Court, and shall have effect accordingly.

such other rules and orders therein, as to costs and all other matters, as may be just.

Special case may be stated where facts undisputed.

Sec. 15.[a] In all cases of interpleader proceedings where the question is one of law, and the facts are not in dispute, the Judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the Court.[b]

Proceedings on special case in Court below and in error.

Sec. 16.[a] The proceeding upon such case shall, as nearly as may be, be the same as upon a special case stated under "The Common Law Procedure Act, 1852;"[c] and error may be brought upon a judgment upon such case; and the provisions of "The Common Law Procedure Act, 1854,"[d] as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act.

Sec. 17.[e] The judgment in any such action or issue as may be directed by the Court or Judge in any interpleader proceedings, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.

Rules, orders, &c., made in interpleader proceedings may be entered of record and made evidence.

Sec. 18.[a] All rules, orders, matters, and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the superior Courts of common law.[f]

(*a*) Repealed, as to proceedings in the High Court, by the Statute Law Revision and Civil Procedure Act, 1883.

(*b*) Before this and the preceding section there was no power to dispose of a case summarily without the consent of all parties (1 & 2 Will. IV. c. 58, s. 1; Harrison *v.* Wright, 13 M. & W. 816; 14 L. J. Ex. 196). There is no appeal from a summary order (Dodds *v.* Shepherd, 1 Ex. D. 75).

(*c*) Secs. 46, 47, 48; as to proceedings by special case, see R. S. C., 1883, Order xxxiv.

(*d*) Sec. 32, repealed.

(*e*) This section is still in force.

(*f*) The section repeats part of sec. 7 of 1 & 2 W. IV. c. 58, omitting so much as excepted a rule or order in interpleader from becoming, by registration, a charge upon land. The section did not supersede proceedings by attachment or execution. (Cetti *v.* Bartlett, 9 M. & W. 840; Day's C. L. P. Act, 4th ed. 363.) For a form of record on proceedings on a feigned issue, see Chitty's Forms, 11th ed. 670.

SUPREME COURT OF JUDICATURE ACT, 1875.

(38 & 39 Vic. c. 77.)

FIRST SCHEDULE.

RULES OF COURT.—ORDER I.[a]

Rule 2.—With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts, 1 & 2 Will. IV. c. 58, and 23 & 24 Vic. c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

RULES OF THE SUPREME COURT.[a]

November, 1878.

RULE IV.

Order liv. Rule 2 *a*.

The exception contained in Rule 2 of Order liv. is hereby repealed so far as regards the proceedings hereinafter-mentioned before the masters of the Queen's Bench, Common Pleas and Exchequer Divisions, and such masters may exercise all such authority and jurisdiction as may be exercised by a Judge at Chambers in respect of * * Interpleader,[b] except where all parties concerned consent to a final determination of the questions in dispute without a jury or special case, and except where the sum in dispute is less than £50, and one of the parties desires such a determination. In such cases the question shall be determined by the Judge, unless the parties agree to refer it to the master. [b]

(*a*) Annulled, R. S. C. 1883, Appendix O.

(*b*) A master had no jurisdiction in interpleaders before this rule. A district registrar has the same powers as a Master.

No. 26.

Affidavit of Interpleader.[a]

18 .— .—No.

In the High Court of Justice.

DIVISION.

Between *Plaintiff,*

AND

Defendant.

I, of

the defendant in the above action, make oath and say as follows:

1. The writ of summons herein was issued on the day of 18 , and was served on me on the day of 18 .

2. The action is brought to recover The said * in my possession, but I claim no interest therein.

* "is" or "are."

3. The right to the said subject-matter of this action has been and is claimed † by one who ‡

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit, or that he has already sued.

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn at the day of 18 ,

Before me,

This affidavit is filed on behalf of the

(a) Appendix B., R. S. C., 1883. The affidavit should be entitled in the original action (Levi *v.* Coyle, 2 Dowl. N. S. 932).

Sheriff's Affidavit of Interpleader.

18 .— .—No.

In the High Court of Justice.

DIVISION.

Between *Plaintiff,*

AND

Defendant.

I, of

officer to the sheriff of , make oath and say as follows :—

1. Under and by virtue of a writ of *fi. fa.*, regularly issued out of this Division in the above action, directed to the said sheriff, commanding him that he should cause to be levied of the goods and chattels of the above-named defendant £ , which the above-named plaintiff lately recovered against the said defendant in this Division, and indorsed to levy £ , besides sheriff's poundage, officer's fees and other incidental expenses, and also by virtue of a warrant of the said sheriff, granted on the said writ and to me directed, I did on the day of take possession of certain goods and chattels in the dwelling-house [*or shop*] of the above-named defendant, situate at , in the same county, and the said goods and chattels still remain in my possession as officer of the said sheriff.

2. On or about the day of , I was served with the notice now produced and shown to me, marked "A."

3. This application is made solely on my behalf as officer to the said sheriff, at my own expense, and for my indemnity only, and I do not, nor does the said sheriff, collude with the said [*claimant*] or with the above-named plaintiff.

Sworn at the day of 18 ,
Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

Filed on behalf of

Stakeholder's Interpleader Summons.

18 .— .—No.

In the High Court of Justice.

DIVISION.

Between *Plaintiff,*

AND

Defendant.

Claimant.

Let all parties concerned attend the Master [*or Judge*] in chambers, at the Royal Courts of Justice, on day, the day of 18 , at o'clock in the noon, on the hearing of an application on the part of the above-named defendant, that the plaintiff and the claimant appear and state the nature and particulars of their respective claims to the subject-matter of this action, and maintain or relinquish the same, and abide by such order as may be made herein; and that, in the meantime, all further proceedings be stayed, and that such other order should be made herein as may be deemed fit.

Dated the day of 18 .

This summons was taken out by of , solicitor for

To

Sheriff's Interpleader Summons.

18 .— .—No.

In the High Court of Justice.

DIVISION.

Between *Plaintiff,*

AND

Defendant.

Claimant.

Let all parties concerned attend the Master [*or Judge*] in chambers, at the Royal Courts of Justice, on day, the day of 18 , at o'clock in the noon, on the hearing of an application on the part of the sheriff of , that the plaintiff and the claimant appear and state the nature and particulars of their respective claims to the goods and chattels seized by the said sheriff, under the writ of fieri facias issued in this action, and maintain or relinquish the same, and abide by such order as may be made herein; and that, in the meantime, all further proceedings be stayed.

Dated the day of 18 .

This summons was taken out by of , solicitor for

To

Affidavit of Claimant.[a]

18 .— .—No.

In the High Court of Justice.

DIVISION.

Between *Plaintiff,*

AND

Defendant.

I, of

make oath and say :—

1. The goods and chattels [*or part thereof, specifying what part*] seized by the sheriff of under the writ of *fi. fa.* in this action, and referred to in the summons herein, were on the day of 18 , by deed bearing that date, sold, transferred and assigned to me by the above-named for and in consideration of [*state consideration*].

2. I claim the said goods and chattels so sold, transferred and assigned to me as aforesaid, as my property, under and by virtue of the said deed, and I verily believe them to be mine.

Sworn at
the day of
18 ,
Before me,

A Commissioner to administer oaths in the Supreme Court of Judicature in England.

Filed on behalf of

No. 50.

Interpleader Order, No. 1.[b]

18 .— .—No. .

In the High Court of Justice.

DIVISION.

IN CHAMBERS.

Between *Plaintiff,*

AND

Defendant,

and between Claimant, and Respondent.

Upon hearing and upon reading the affidavit of , filed the day of 18 , and

It is ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be .

Dated the day of 18 .

(*a*) The affidavit need only show a *primâ facie* case.

(*b*) This and the following interpleader orders are given in Appendix K, R. S. C., 1883.

No. 51.

Interpleader Order, No. 2.

18 .— .—No. .

In the High Court of Justice.

DIVISION.

IN CHAMBERS.

Between *Plaintiff,*

AND

Defendant,

and Claimant.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant, and that the costs of this application be

Dated the day of 18 .

No. 52.

Interpleader Order, No. 3.[a]

18 .— .—No. .

In the High Court of Justice.

DIVISION.

IN CHAMBERS.

Between *Plaintiff,*

AND

Defendant,

and between Claimant, and the said Execution Creditor, and the Sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 and

It is ordered that the said sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

(*a*) This, and the two following orders, are substantially the same as those formerly known as Forms A, B, & C.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the said claimant shall be the plaintiff and the said execution creditor shall be the defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 18 .

No. 53.

Interpleader Order, No. 4.

18 .— .—No.

In the High Court of Justice.

DIVISION.

IN CHAMBERS.

Between *Plaintiff*,

AND

Defendant,

and between Claimant, and the said Execution Creditor, and the Sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 and

It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the master [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possesion of the goods seized by him under the writ of *fieri facias* herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of 18 .

No. 54.

Interpleader Order, No. 5.

18 .— .—No. .

In the High Court of Justice.

Division.

IN CHAMBERS.

Between *Plaintiff,*

AND

Defendant,

and between Claimant and the said Execution Creditor, and the Sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that upon payment of the sum of £ into Court by the said claimant, or upon his giving security to the satisfaction of one of the masters [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *fieri facias* issued herein.

And it is further ordered that in the meantime, and until such payment be made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the day of 18 .

No. 55.

Interpleader Order, No. 6.

18 .— .—No.

In the High Court of Justice.

DIVISION.

MASTER IN CHAMBERS.

Between *Plaintiff*

AND

Defendant,

and between Claimant and the
said Execution Creditor, and the
Sheriff of Respondents.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be

disposed of and determined in a summary manner, now upon hearing and upon reading the affidavit of filed the day of 18 , and

It is ordered that

And that the costs of this application be

Dated the day of 18 .

No. 56.

Interpleader Order, No. 7.

18 .— .—No. .

In the High Court of Justice.

DIVISION.

MASTER IN CHAMBERS.

Between *Plaintiff,*

AND

Defendant,

and between Claimant, and the said Execution Creditor, and the Sheriff of Respondents.

Upon hearing , and upon reading the affidavit of filed the day of 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fieri facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the cost of this application be

Dated the day of 18

Interpleader Issue.

18 .— .—No. .

In the High Court of Justice.

DIVISION.

Between A. B. - - - - - - - - - *Plaintiff,*

AND

C. D. - - - - - - - - - *Defendant.*

Interpleader Issue.

Delivered the day of , by Solicitor for the plaintiff, pursuant to an order of dated the day of 18 .

Whereas the plaintiff *A. B.* affirms and the defendant *C. D.* denies that certain goods and chattels, that is to say,*

Describe the goods and chattels.

in and about certain premises in the occupation of situate and being at seized and taken in execution by the sheriff of under a writ of *fi. fa.* tested the day of and issued out of the Division of Her Majesty's High Court of Justice, directed to the said sheriff, for the having of execution of a judgment of that Division, recovered by the said in an action at his suit against were or some part thereof was[a] at the time of the said seizure[b] the property of the said as against the said And it has been ordered by that the said question shall be tried by† at Therefore let the same be tried accordingly.

State mode of trial, whether with or without a jury.

(*a*) The issue should follow the terms of the order. If there is more than one question to be decided, state it thus: "And the plaintiff also affirms, and the defendant also denies," &c.

Where an interpleader issue is settled in the common form to try whether the goods seized or any part thereof were, at the time of the seizure, the property of the claimant, and it appears that the claimant claims a part only, the goods seized being more than sufficient to satisfy the judgment, the claimant has been ordered to specify the goods claimed (Price *v.* Plummer, 26 W. R. 45); but his claim will not be defeated merely because he claims all the goods, and it then turns out that he is only entitled to some of them (Plummer *v.* Price, 39 L. T. 657). Where the issue was to determine whether the plaintiff had any property in the goods, proof of a lien was held to entitle him to succeed (Rogers *v.* Kenny, 9 Q. B. 592).

(*b*) If between two execution creditors, insert, "At the time of delivering the said writ to the sheriff."

Part II.—Interpleader in the Lord Mayor's Court.

MAYOR'S COURT OF LONDON PROCEDURE ACT, 1857.
(20 & 21 Vic. c. clvii.)

Interpleader defendant in action.

Sec. 32. Upon application made by or on behalf of any defendant in any action in the Court, such application being made after declaration and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into Court or to pay or dispose of the subject-matter of the action in such a manner as the Court may order or direct, it shall be lawful for the Registrar to issue a summons calling upon such third party to appear in Court, and to state the nature and particulars of his claim, and to maintain or relinquish his claim, which summons may be served upon such third party in any part of England or Wales; and upon such summons the Court may hear the allegations as well of such third party as of the plaintiff, and in the meantime stay the proceedings in such action, and finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more issue or issues, and also direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, dispose of the merits of their claims, and determine the same in a summary manner, and make such rules and orders therein as to costs and all other matters as may appear to be just and reasonable.[a]

Judgment and decision final.

Sec. 33. The judgment in any such action or issue as may be decreed by the Court, and the decision of the Court in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them.

Claim of party not appearing barred.

Sec. 34. If such third party shall not appear upon such summons to maintain or relinquish the claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators, saving nevertheless the right or claim of such third party against the plaintiff, and there-

(a) By Orders in Council, ss. 12, 13, 14, 15, 16, 17 and 18, of the Common Law Procedure Act, 1860, apply to interpleader proceedings in the Lord Mayor's Court, and shall be construed as if contained in a local and personal Act, specially relating to such Court, and shall have effect accordingly. (Statute Law Revision and Civil Procedure Act, 1883, s. 7).

upon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

For relief of serjeant-at-mace in execution of process against goods.

Sec. 35. When any claim shall be made to or in respect of any goods or chattels taken or intended to be taken in execution under the process of the Court, or to or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful to and for the Registrar, upon application of the Serjeant-at-mace, or any of his officers, made before or after the return of such process, and as well before as after any action brought against such Serjeant-at-mace or any of his officers, to issue a summons calling before the Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of the superior Courts, or in any local or inferior Court of record, in respect of such claim, shall be stayed; and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons; and the said Court shall thereupon exercise, for the adjustments of such claim, and the relief and protection of the said Serjeant-at-mace or any of his officers, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

Interpleader Summons, under Sec. 32.

In the Mayor's Court, London.

Plaintiff,
Defendant.

Whereas the defendant herein has stated to the Court that he does not claim any interest in the subject-matter of this suit, but that the right thereto is claimed or is supposed to belong to you: Take Notice therefore, you are hereby summoned and required to attend at the sitting of this Court, at the Guildhall of the City of London, on the day of at o'clock in the noon, to state the nature and particulars of your claim, and to maintain or relinquish the same.

And further take notice, that if you do not appear hereto, you, and all persons claiming by, from, or under you, will be for ever barred from prosecuting your claim against the said defendant or his executors or administrators.

Dated this day of 188

To Mr.

Part III.—Interpleader in the County Court.

THE COUNTY COURTS ACT, 1856.

(19 & 20 Vic. c. 108.)

Appeal in proceedings in interpleader.

Sec. 68. An appeal from the decision of a County Court, on the same grounds and subject to the same conditions as are provided by the 14th section of the Act of the 13th and 14th years of the reign of Her present Majesty, c. 61, shall be allowed . . . in proceedings in interpleader where the money claimed or the value of the goods or chattels claimed, or of the proceeds thereof, exceeds £20, and in all actions where the parties agree that the Court shall have jurisdiction. [a]

Claimant of goods taken in execution must deposit their values or pay costs of keeping possession, otherwise goods shall be sold.

Sec. 72. Where any claim shall be made under sec. 118, 9 & 10 Vic. c. 95,[b] to or in respect of any goods taken in execution under the process of a County Court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisement in case of dispute, to be by such bailiff paid into Court, to abide the decision of the Judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained, and in default of the claimant so doing the bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the decision of the judge.[c]

THE COUNTY COURTS ACT, 1867.

(30 & 31 Vic. c. 142.)

High bailiff may interplead where claims as to goods taken in execution are made.

Sec. 31. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of a County Court, or in respect of the proceeds or value thereof, by any person, it shall

(a) An appeal lies only against the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, unless by special leave of the Judge under 30 & 31 Vic. c. 142, s. 13, by which, if the Judge shall think it reasonable and proper, an appeal shall be allowed in actions in which an appeal does not otherwise lie. If the value of the goods seized exceeds £20, an appeal lies, although the claim in the original plaint is under £20, and the claimant has paid it to prevent the goods being sold. (Vallance *v.* Naish, 27 L. J. Ex. 142; 2 H. & N. 712.) An appeal may be by special case, regulated by 13 & 14 Vic. c. 61, s. 14, and Order xxix., or by motion under sec. 6 of the County Court Act, 1875. Certiorari will not lie to remove interpleader proceedings into the Superior Courts (Mackellar *v.* Summers, 2 W. R. 477; 23 L. T. 146; 18 Jur. 522). A landlord appearing on the hearing of an interpleader may appeal where his rights are prejudiced (Wilcoxon *v.* Searby, 29 L. J. Ex. 154).

(b) Repealed 30 & 31 Vic. c. 142, Sched. C.

(c) The bailiff may proceed under Order xxi., R. 1, to obtain a speedy hearing of the case; but where no deposit has been made, he may sell without first applying for an interpleader. (Cramer *v.* Matthews, 7 Q. B. D. 425; s. n. Davies *v.* Wise, 45 L. T. 26; 50 L. J. Q. B. D. 651.) The judge has power to direct a sale under C. L. P Act, 1860, s. 13.

be lawful for the registrar of the Court, upon application of the high bailiff, as well before as after any action brought against him, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and the judge of the Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and shall also adjudicate between such parties, or either of them, and the high bailiff, with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any suit brought in such Court, and shall be final and conclusive as between the parties, and as between them or either of them, and the high bailiff, unless the decision of the Court shall be in either case appealed from, and upon the issue of the summons any action which shall have been brought in any Court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.[a]

THE COUNTY COURT RULES, 1875.

Order XXI.

Interpleader.

Proceedings, generally.

1. Where any claim is made to or in respect of any goods or chattels taken in execution under the process of any County Court, or in respect of the proceeds or value thereof,[b] and summonses have been issued on the application of the bailiff, such summonses shall be served in such time and mode as hereinbefore directed for an ordinary summons to appear to a plaint, [c] and the case shall proceed as if the claimant were the plaintiff, and the execution creditor the defendant;[d] provided that where the claimant has not at the request of the bailiff made deposit in accordance with sec. 72 of the County Courts Act, 1856, the time of service may, if the high

(*a*) This section is in substitution for 9 & 10 Vic. c. 95, s. 118, repealed by Schedule C of the present Act.

There is no jurisdiction to stay an action against a purchaser of goods from the high bailiff (Hills *v.* Renny, 5 Ex. D. 313; 49 L. J. Ex. 710; 42 L. T. 671).

Under the repealed sections of the County Courts Act, the Court could only determine the right to the goods claimed without adjudicating on damages sustained, and the claimant might afterwards sue for trespass to the goods claimed (Mercer *v.* Stanbury, 2 H. & N. 155; 25 L. J. Ex. 316; Jones *v.* Williams, 4 H. & N. 706); but under the present section, and Order xxi. Rules 3, 4, 5, the order on the summons bars all future claims, whether adjudicated upon by the judge or not, and no action in respect of them can be maintained by the claimant (Death *v.* Harrison, L. R. 6 Ex. 15; 40 L. J. Ex. 26; 23 L. T. 495). The practice under the section will be found stated in Order xxi., County Court Rules, 1875, *post*.

(*b*) The claim to goods seized need not be in writing, and notice to the high bailiff is sufficient, but it is prudent to make a written claim.

(*c*) Order viii.

(*d*) Actions of interpleader may, at the instance of either party, be tried by a jury (Order xvi., R. 3).

bailiff so desires, by leave of the judge or registrar, be such time as will obtain a speedy decision on the claim.[a]

Claimant to lodge particulars and grounds of claim.

2. The claimant shall, five clear days before the return day, deliver to the bailiff, or leave at the office of the registrar of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent of the amount thereof, and for what period, and in respect of what premises the same is claimed to be due, and the name, address, and description of the claimant shall be fully set forth in such particular,[b] and any money paid into Court under the execution shall be retained by the registrar until the claim shall have been adjudicated upon: Provided that by consent of all parties, or without such consent if the Judge shall so direct, an interpleader claim may be tried, although this rule has not been complied with.[c]

Claim or damage.

3. Where the claimant to goods taken in execution claims damages from the execution creditor, or from the high bailiff, for or in respect of the seizure of the goods, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims damages.[d]

Claim of damages against high bailiffs.

4. Where an execution creditor claims damages against a high bailiff arising out of the execution of any process, he shall, five clear days before the return day deliver to the high bailiff a notice of such claim, stating the grounds for and amount of such claim.[e]

Payment into Court of damages claimed under 30 & 31 Vic. c. 142.

5. Where a claim for damages, under section 31 of the County Courts Acts, 1867, is made against any high bailiff and execution creditor, or either of them, they or either of them may pay into

(*a*) It is not necessary that the high bailiff should request the claimant to make a deposit before selling the goods seized; and if no deposit be made, he is entitled to sell without first applying for an interpleader. (Cramer *v.* Matthews, 7 Q. B. D. 425.)

(*b*) Form of particulars, p. 243. The particulars should be specific, but it is not an objection that they do not show valid grounds of claim. (R. *v.* Richards, 20 L. J. Q. B. 351; Richardson *v.* Wright, L. R. 10 Ex. 367; 33 L. T. 579; 23 W. R. 878.) A notice, merely stating that the goods seized are the property of the claimant, and not of the execution creditor, is however insufficient, and so is a mere repetition of the claim. (R. *v.* Chilton, 15 Q. B. 220; Cullum *v.* Ross, 19 L. J. Q. B. 318; 14 Jur. 696.) A notice, stating that the goods were assigned to the claimants by an indenture dated, &c., was held sufficient (R. *v.* Richards, 20 L. J. Q. B. 351); and it is not necessary to state to what part of the goods seized the claimant is entitled (R. *v.* Stapleton, 21 L. J. Q. B. 8), or to set them out in a schedule (Heslop *v.* McGeorge, 18 L. T. O. S. 109). The claimant's address and description should be accurately stated, but a mis-statement, not calculated to mislead, has been held sufficient, and the County Court Judge's decision on the sufficiency of the particulars is open to review. (Hardy *v.* Walker, 23 L. J. Ex. 57; 9 Ex. 261.)

(*c*) It would seem that the judge may refuse to adjudicate on the claim where the particulars are clearly insufficient (R. *v.* Chilton, 15 Q. B. 220); but it has been held that if the particulars are insufficient, or not delivered within the prescribed time, his proper course is, either to amend the particulars or to direct a new summons to issue, so that he may try the case on the merits, and in so doing he has a discretion as to costs (Beswick *v.* Roffey, 9 Ex. 315; 23 L. J. Ex. 89), which is not open to review. (Churchward *v.* Coleman, L. R. 2 Q. B. 18; 36 L. J. Q. B. 57.) If the Judge refuses to hear the summons, on the ground that the particulars are insufficient, a rule has been granted calling on him to adjudicate. (Churchward *v.* Coleman, L. R. 2 Q. B. 18; Whitehead *v.* Proctor, 3 H. & N. 532.)

(*d*) Care should be taken to include any claim for damages, as the order on the summons bars all further claims, whether adjudicated upon by the Judge or not, and no action in respect of them can be maintained. (Death *v.* Harrison, L. R. 6 Ex. 15.)

(*e*) Form, p. 252.

Court money in full satisfaction of such claim for damages, and such payment into Court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies as by the practice of County Courts they would respectively have if the proceeding had been an action in which the claimant was plaintiff and the high bailiff and judgment creditor defendants.

Interpleader summons.

6. Interpleader summonses shall be issued by the registrar, on the application of the bailiff, without leave of the Court.

Whence issued.

7. Interpleader summonses shall be issued from the Court of the District in which the levy was made, and the execution creditor and claimant shall be summoned to such Court.

Costs where decision against claimant.

8. Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, shall be decided against the claimant, the costs of the bailiff allowed by the Judge shall be retained by him out of the amount levied, if the Judge shall not otherwise order, but without prejudice to the right of the execution creditor against the claimant for the sum so retained.(a)

Where assignor disputes an assignment.

9. Where the defendant in an action brought by the assignee of a debt or chose in action has had notice that the assignment is disputed by the assignor, or any one claiming under him, or has had notice of any other opposing or conflicting claims to such debt or chose in action, he may, within five days of the service of the summons, apply to the registrar for a summons against the assignor or the person making such conflicting claim, and the registrar shall thereupon issue an interpleader summons according to the form in the schedule, returnable as soon as conveniently may be, and upon the return day of such summons the Court shall hear the case of the defendant and of the plaintiff in the action, and also of the assignor disputing such assignment or of the person making such opposing or conflicting claim, and shall give such judgment therein as shall finally determine the rights and claims of all parties, as if the same had been an ordinary action into which a third party had been introduced by counterclaim.

Form 85.

Defendant in an action by assignee may pay money into Court.

10. Where a defendant in an action brought by the assignee of a debt or chose in action has had notice as in the last preceding rule mentioned, and thinks fit to pay the debt and costs into Court to abide its decision, he shall upon such payment into Court give to the registrar the name of the person against whose dispute of the assignment or conflicting claim he desires to be protected, and the registrar shall thereupon give notice to such person according to the form in the schedule, and on the return day of the summons the Judge shall determine the rights of the parties, and may if he thinks fit order the defendant to pay all or any part of the costs.

Form 86.

(a) If the bailiff omits to retain his costs and pays over the proceeds, he cannot afterwards recover them. (Bloor v. Huston, 24 L. J. C. P. 26; 15 C. B. 266.)

Particulars of Claim under Order xxi., *Rule* 2.

No. of plaint.

In the County Court of holden at

Between *Plaintiff*,

AND

Defendant.

Take notice, that I, [Name, address and description of claimant.]
of
claim certain goods and chattels, more particularly specified in the schedule hereunder written, seized and taken in execution in the house and premises of situate at under process issuing out of this Court in this action, and mentioned in the interpleader summons, and that the grounds of my claim are that the said goods and chattels [Here shortly state grounds of claim].

And take further notice, that I claim the sum of £ from the said and the high bailiff for damages arising out of the said execution, and that the grounds of my claim for damages are that [Shortly state grounds of claim for damages].

Dated day of 18 .

(Signed) *A. B.*, Claimant.

THE SCHEDULE ABOVE REFERRED TO.

To the execution creditor
and to the High Bailiff of this Court.

85.

Summons where a Defendant, sued by an Assignee, has had notice that the Assignment is disputed by the Assignor.

Whereas the defendant in this action has had notice from you that you dispute the assignment of the subject-matter in dispute between the plaintiff and defendant in this action [*or* that you claim the subject-matter in this action]; Order xxi., Rule 9.

You are therefore summoned to appear at a Court to be holden at on the day of at the hour of in the noon, when the dispute [*or* claim] between you and the plaintiff will be determined, and judgment be given determining the rights and claims of the plaintiff, the defendant, and yourself.

Dated this day of 18 .

Registrar.

To *E. F.*, of [*here insert address and description of the person to be summoned.*]

86.

Summons where a Defendant sued by an Assignee has had notice that the assignment is disputed by the Assignor, and has paid debt and costs into Court.

Order xxi., Rule 10.

Whereas the defendant has had notice that you dispute the assignment of the subject-matter in this action.

And whereas he has paid into Court the sum of £ , being the amount claimed by the action, and the sum of £ for costs.

This is to give you notice that you must appear at a Court to be holden on the day of at the hour of in the noon, when the Court will adjudicate.

87.

Order where Assignment is invalid.

No. of Plaint.

In the County Court of , holden at

Between A. B - - - - - - - - - *Plaintiff,*

AND

C. D. - - - - - - - - - *Defendant,*

AND

E. F., made party by summons, dated the day of .

Order xxi., Rule 9.

It is this day adjudged touching the dispute to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged, and that the said *E. F.* do recover against the plaintiff the said sum of £ for costs, and that the defendant do recover against the plaintiff the sum of £ for costs.

It is further adjudged that the said *E. F.* do recover against the defendant the sum of £ for debt, and the sum of £ for costs.

It is ordered that the plaintiff do pay the sum of £ and the sum of £ to the registrar on, &c.

And it is further ordered that the defendant do pay the sum of £ to the registrar, &c.

88.

Order where assignment is valid.

No. of Plaint.

[*Heading as in last form.*]

It is this day adjudged, touching the dispute to the assignment of the subject-matter of this action to the plaintiff, that the said assignment is good, and that the plaintiff do recover against *E. F.* the sum of £ for costs; and that the defendant do recover from the said *E. F.* the sum of £ for costs. Order xxi., Rule 9.

It is further adjudged that the plaintiff do recover against the defendant the sum of £ for debt, and £ for costs. Order xxi., Rule 9.

It is ordered that E. F. do pay the sum of £ and the sum of to the registrar of the Court, on the day of

And it is further ordered that the defendant do pay the sum of £ to the registrar on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of 18 .]

89.

Order where Assignment is invalid, and Defendant files a Counterclaim against Plaintiff.

[*Heading as in Form* 87.]

It is this day adjudged, touching the dispute to the assignment of the subject-matter of this action to the plaintiff, that there is no such assignment as alleged, and that the counterclaim of £ against the plaintiff by the defendant is sustained.

It is adjudged that the assignor do recover against the defendant the sum of £ for debt, together with the sum of £ for costs.

It is further adjudged that the defendant do recover against the plaintiff the sum of £ in respect of his counterclaim and the sum of £ for costs.

It is ordered that the defendant do pay the sum of £ together with the sum of £ to the registrar, on, &c.

It is further ordered that the plaintiff do pay the sum of and the sum of £ to the registrar on, &c.

109.

Interpleader Summons to Execution Creditor.

No. of Plaint.
(*Seal*).

In the County Court of holden at

Between A. B. - - - - - - - - *Plaintiff,*
[*Address, Description,*]

AND

C. D. - - - - - - - - *Defendant.*
[*Address, Description.*]

30 & 31 Vic. c. 142, s. 31.

WHEREAS [*here insert the name, address and description of Claimant so far as is then known*] hath made a claim to certain goods and chattels, [*or* moneys, &c.] taken in execution under process issuing out of this Court, at your instance [*or* certain rent alleged to be due to him]:

You are therefore hereby summoned to appear at a Court to be holden at on the day of 18 , at the hour of in the noon, when the said claim will be adjudicated upon, and such order made thereupon as to the Judge shall seem fit.

Dated this day of 18 .

Registrar of the Court.

To the Execution Creditor.

NOTE.—*The Claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the Registrar of this Court, four days before the day of hearing.*

110.

Interpleader Summons to a Claimant Setting up a Claim to the Goods or the Proceeds thereof.

[*Name, address, and description of Claimant*].

You are hereby summoned to appear at a Court to be holden at on the day of 18 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* moneys, &c.] taken in execution under process issued in this action at the instance of [*the execution creditor*], and in default of your then establishing such claim the said goods and chattels will then be sold [*or* the said moneys, &c., paid over] according to the exigency of the said process; and take notice that

you are hereby required, five days before the said day, to deliver to the officer in charge of the said process, or leave at my office, particulars of the goods and chattels which [*or* the proceeds whereof] are claimed by you, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid your claim will not be heard by the Court.

To [*the claimant above-named*].

111.

Interpleader Summons to a Claimant setting up a Claim to Rent in respect of the Premises upon which the Execution was Levied.

[*Name, Address, and Description of Claimant*].

You are hereby summoned to appear at a Court to be holden at on the day of 18 , at the hour of in the noon, to support a claim made by you to certain rent alleged by you to be due to you in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process of this Court in this action at the instance of [*the execution creditor*], and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over according to the exigency of the said process [*or*, if such goods and chattels shall have then been sold, then the proceeds of such sale will be paid over according to the exigency of the said process];

And take notice that you are hereby required, five days before the said day, to deliver to the officer in charge of the said process, or leave at my office, particulars of the amount of the rent claimed by you, and of the period for which and of the premises in respect of which you claim such rent, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars, your claim will not be heard by the Court.[a]

To [*the claimant above-named*].

(*a*) If goods of a stranger are taken in execution by the high bailiff under the County Courts Act, 1856, the landlord cannot claim payment of his rent (Foulger *v.* Taylor, 5 H. & N. 202).

112.

Interpleader Summons to an Execution Creditor, and to the High Bailiff where Claimant claims Damages as well as the Goods Seized.

[Insert residence and description of claimant.]

Whereas *E. F.*, of hath made a claim to certain goods and chattels [*or* moneys, &c.] taken in execution under process issuing out of this Court at your instance, and hath also claimed from you and from the high bailiff of this Court the sum of £ for damages arising out of the said execution.

You and the high bailiff are therefore hereby summoned to appear at a Court, to be holden at , the day of 18 , at the hour of in the noon, when the said claim, both as to the said goods and chattels, and as to the said damages, will be adjudicated upon, and such order made thereupon as to the Judge shall seem fit.

To the execution creditor, and to
the high bailiff of this Court.

NOTE.—*The claimant is called upon to give the particulars of his claim, which you may inspect, on application at the office of the registrar of this Court, four days before the day of hearing.*

113.

Interpleader Summons to a Claimant setting up a Claim to Damages, as well as to Goods or the proceeds thereof.

[*Name, address, and description of Claimant*].

You are hereby summoned to appear at a Court to be holden at on the day of 18 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* moneys, &c.,] taken in execution under process issued in this action at the instance of [*the execution creditor*], and also for damages arising out of such execution, and in default of your then establishing such claim, the said goods and chattels will then be sold [*or* the said moneys paid over] according to the exigency of the said process; and take notice that you are hereby required five days before the said day to deliver to the officer in charge of the said process, or leave at my office, particulars of the goods and chattels which [*or* the proceeds whereof] are claimed by you, and of the grounds of your claim, and also of the grounds upon which you claim damages, and you must

also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and in such particulars you shall set forth fully your name, address, and description; and take notice that in the event of your not giving such particulars as aforesaid your claim will not be heard by the Court.

To [*the claimant above-named*].

114.

Order on an Interpleader Summons, where the Claim is not established.

Between A. B. - - - - - - - - *Plaintiff*,

AND

C. D. - - - - - - - - - *Defendant*,

AND

E. F. - - - - - - - - - *Claimant.*

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action [*or* to certain rent alleged to be due to him], that the said goods and chattels [*or* moneys, &c., or part thereof, to wit, &c., specifying them] are the property of the execution debtor [*or* that there is no rent due to the said *E. F.*].

And it is ordered that the costs of this proceeding, amounting to be paid by the said *E. F.* to the registrar of this Court on or before the day of for the use of the execution creditor.

115.

Order on an Interpleader Summons where the Claim is established.

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action [*or* to certain rent alleged to be due to him], that the said goods and chattels [*or* moneys, &c., or part thereof, to wit, specifying them] are his property [*or* that rent to the amount of £ is due to him]. And it is ordered that the said [*execution creditor*] do pay to the registrar of this Court, for the use of the said *E. F.*, £ for costs, on or before the day of 18 .

116.

Order on an Interpleader Summons where both goods and damages are claimed, and the claim to neither is established.

No. of Plaint.

In the County Court of holden at

[*Seal.*]

Between A. B. - - - - - - - *Plaintiff,*

AND

C. D. - - - - - - - - *Defendant,*

AND

Between E. F. - - - - - - - *Claimant,*

AND

The execution creditor and the high bailiff of this Court - - - - - *Respondents.*

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claims against [*the execution creditor*] and the high bailiff of this Court, that the said goods and chattels [*or* moneys, &c., or part thereof, describe the part] are the property of [*the execution debtor*] and that the said *E. F.* is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this Court.

And it is ordered that the costs of this proceeding, amounting to £ be paid by the said *E. F.* to the registrar of this Court, on or before the day of 18 , as to £ , part thereof, for the use of the execution creditor, and as to £ , the residue thereof, for the use of the high bailiff of this Court.

117.

Order on an Interpleader Summons where both goods and damages are claimed, and the claim to both is established.

[*Same heading as No.* 116.]

If the claim for damages be against the execution creditor as well as against the high bailiff, so state it.

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claimed against the high bailiff of this Court, that the said goods and chattels [*or* moneys, &c., or part thereof, specifying them] are the property of *E. F.*, and that *E. F.* is entitled to recover the sum of £ for damages arising out of the said executions against the high bailiff of this Court.

And it is ordered that the high bailiff of this Court do pay the said sum of £ for damages, and the sum of £ for costs, and the execution creditor the sum of £ for costs, to the registrar of this Court for the use of the said *E. F.*, on or before day of 18 .

To the execution creditor and the high bailiff of this Court.

118

Order on an Interpleader Summons where both goods and damages are claimed, and the claim to the goods is, but that to damages is not, established.

[*Same heading as No.* 116.]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claims against the execution creditor and the high bailiff of this Court, that the said goods and chattels [*or* moneys, &c., or part thereof, specifying them] are the property of the said *E. F.* but that the said *E. F.* is not entitled to recover any damages from either the execution creditor or the high bailiff of this Court.

And it is ordered that the execution creditor do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs for the use of the said *E. F.*, and that the said *E. F.* do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs, for the use of the high bailiff of this Court.

To the execution creditor and to *E. F.*, the claimant.

119.

Order on an Interpleader Summons where both goods and damages are claimed, and the claim to the goods is not, but the claim to damages is, established.

[*Same heading as No.* 116.]

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.,] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claims against the execution creditor and the high bailiff of this Court, that the said goods and chattels [*or* moneys, &c.,] are the property of the execution debtor, and that the said *E. F.* is entitled to recover £ for damages from the high bailiff of this Court, but not any damages from the execution creditor.

This may arise where the bailiff is guilty of some wrongful act in taking property of the execution debtor out of the possession of the claimant.

And it is ordered that the said *E. F.* do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs, for the use of the execution creditor, and that the high bailiff of this Court do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs, for the use of the said *E. F.*

To *E. F.*, the claimant, and
the high bailiff.

120.

Claim of an Execution Creditor for damages from a High Bailiff.

30 & 31 Vic., c. 142, s. 31. Or. xxi., R. 4.

Take notice, that I, the execution creditor, claim the sum of £ from you, the high bailiff of this Court, for damages arising out of a certain execution in this cause, and that the grounds of my claim are as follows. [*Here state the grounds of the claim, e.g.*, for that you, having seized certain goods and chattels of and belonging to the execution debtor, under process issued from this Court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution.]

Dated this day of 18 .

To the high bailiff
of this Court.

Execution creditor.

121.

Order on an Interpleader Summons by Execution Creditor against a High Bailiff, where the Claim to Damages is established.

No. of Plaint.
(*Seal*)

In the County Court of holden at

Between A. B. - - - - - - - - *Plaintiff,*

AND

C. D. - - - - - - - - *Defendant,*

AND

Between The execution creditor - - - - *Claimant,*

AND

The high bailiff of this Court - - *Respondent.*

It is this day adjudged, touching the claim of the execution creditor in this cause, against the high bailiff of this

Court, for damages arising out of an execution in this cause, in which process issued from this Court, at the instance of the said , the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of , [*the execution debtor,*] that the said , the execution creditor, is entitled to recover from the high bailiff of this Court the sum of £ for damages arising out of the said execution.

And it is ordered that the high bailiff of this Court do, on or before the day of 18 , pay to the registrar of this Court the said sum of £ and also the further sum of £ for costs, for the use of the said the execution creditor.

To the high bailiff of this Court.

122.

Order on an Interpleader Summons by an Execution Creditor against a High Bailiff where the claim to damages is not established.

[*Same heading as No.* 121.]

It is this day adjudged, touching the claim of the execution creditor in this cause, against the high bailiff of this Court, for damages arising out of an execution in this cause, in which process issued from this Court at the instance of the said , the execution creditor, directing the said high bailiff of this Court to levy the sum of £ of and from the goods and chattels of , [*the execution debtor,*] that the said , the execution creditor, is not entitled to recover from the said high bailiff of this Court any damages in respect of or in any way arising from the said execution.

And it is ordered that the said , the execution creditor, do on or before the day of 18 , pay to the registrar of this Court the sum of £ for costs, for the use of the said high bailiff of this Court.

To , the execution creditor.

123.

Order on Interpleader Summons where both goods and damages are claimed and money is paid into Court in respect of the latter, and the claim to the goods is established, and the money paid into Court is found to be sufficient to satisfy the Damages.

[*Same heading as No.* 121].

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claimed against the high bailiff of this Court, and in respect of which damages hath paid into Court the sum of £ , that the said goods and chattels [*or* moneys, &c., or part thereof, specifying them or it] are the property of *E. F.*, but that the said sum paid into Court is sufficient to satisfy all damages arising out of the said execution.

And it is ordered that the execution creditor do pay to the registrar of this Court the sum of £ for costs for the use of *E. F.*, and that *E. F.* do pay to the registrar of this Court the sum of £ for costs for the use of the high bailiff, on or before the day of 18

To the execution creditor and to E. F.

124.

Order on an Interpleader Summons where both goods and damages are claimed, and money is paid into Court in respect of the latter, and the claim to the goods is established, and the money paid into Court is adjudged insufficient.

[*Same heading as No.* 121].

It is this day adjudged, touching the claim of *E. F.* to certain goods and chattels [*or* moneys, &c.] taken in execution in this action, and for damages arising out of the said execution, and which *E. F.* claims against the high bailiff, and in respect of which damages has paid into Court the sum of £ , that the said goods and chattels [*or* moneys, &c.,] are the property of the said *E. F.*, and that the said sum of £ paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said *E. F.* is entitled to recover the further sum of £ for damages from the high bailiff.

And it is ordered that the execution creditor do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs, for the use of the said *E. F.*, and that the high bailiff do pay to the registrar of this Court, on or before

the last-mentioned day, the said further sum of £ for damages, and also the sum of for costs, for the use of the said *E. F.*

To the execution creditor and the high bailiff.

125.

Order on an Interpleader Summons by an Execution Creditor against a High Bailiff for damages, and when the High Bailiff pays money into Court.

[*Same heading as No.* 121].

It is this day adjudged, touching the claim of the execution creditor in this cause against the high bailiff of this Court, for damages arising out of an execution in this cause, in which process issued from this Court at the instance of the said the execution creditor, directing the said high bailiff of this Court to levy the sum of of and from the goods and chattels of [*the execution debtor*], and in respect of which damages the high bailiff hath paid into Court the sum of £ , that the sum paid into Court is sufficient to satisfy all damages arising out of the said execution [*or*, that the sum paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said the execution creditor, is entitled to recover the further sum of £ for damages from the high bailiff].

And it is ordered that the said , the execution creditor, do pay to the registrar of this Court, on or before the day of 18 , the sum of £ for costs for the use of the high bailiff [*or* that the high bailiff do pay to the registrar of this Court, on or before the day of 18 , the said further sum of £ , for damages, and also the sum of £ , for costs, for the use of the execution creditor.

To the execution creditor [*or* the high bailiff of this Court].

126.

Warrant of Execution against the Goods of Claimant.

Whereas, at a Court holden at on the day of 18 , the plaintiff, by the judgment of the said Court, recovered against the defendant the sum of £ for debt [or damages] and for costs.

And whereas the defendant, by an order of the Court, was ordered to pay the same to the registrar of the Court.

And whereas, default having been made in payment according to the said order, an execution issued against the goods of the defendant,

under which certain goods and chattels were seized, in respect of which, *E. F.*, of &c., made claim, and which claim was heard and decided upon at a Court held at on the day of 18 , and it was adjudged that the goods so seized under the said execution were the property of the defendant [*or* that certain rent alleged by the said *E. F.*, of, &c., to be due to him was not so due].

And it was ordered that the costs of that proceeding, amounting to the sum of £ should be paid by the claimant to the registrar of the said Court, on or before the day of 18

And whereas default has been made in payment according to the said last-mentioned order.

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said claimant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said claimant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the claimant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 18 .

By the Court,

Registrar of the Court.

To the high bailiff of the said Court, and others the bailiffs thereof.

	£	*s.*	*d.*
Costs adjudged			
Poundage for issuing this warrant			
Total amount to be levied ...			

19 & 20 Vic. c. 108, sec. 46.

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said claimant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 18 .

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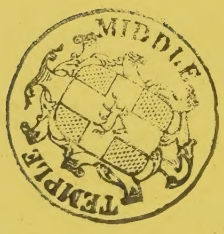
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